

1064
United States 1064

Circuit Court of Appeals,

For the Ninth Circuit.

RIALTO IRRIGATION DISTRICT, a Corporation,
Plaintiff in Error,

vs.

N. W. STOWELL,

Defendant in Error,

and

N. W. STOWELL,

Plaintiff in Error,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,
Defendant in Error.

Transcript of Record.

Upon Writ of Error and Cross-Writ of Error to the
United States District Court for the South-
ern District of California,
Southern Division.

Filed

OCT 29 1914

F. D. Monckton,
Clerk.

INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

**Writ of Error [Sued Out by Rialto Irrigation
District (Original)].**

United States of America,—ss.

The President of the United States, to the Honorable
the Judge of the District Court of the United
States, for the Southern District of California,
Southern Division, Greeting:

Because in the record and proceedings, as also in
the rendition of the judgment of a cause which is in
the said District Court before you at the July, 1913,
term thereof, wherein Rialto Irrigation District is
plaintiff in error, and N. W. Stowell defendant in
error, and wherein N. W. Stowell was plaintiff and
Rialto Irrigation District was defendant, manifest
error hath happened to the great damage of said
plaintiff in error, as by its complaint appears;

We, being willing that error, if any hath been,
should be duly corrected, and full and speedy jus-
tice done to the parties aforesaid in this behalf, do
command you, if judgment be therein given, that
then under your seal, distinctly and openly, you send

the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 14th day of April next, in the said United States Circuit Court of Appeals, to be then and there held, to the end that the record and proceedings [5*] aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, this 17 day of March, in the year of our Lord one thousand nine hundred and fourteen.

[Seal]

WM. M. VAN DYKE,

Clerk of the United States District Court for the Southern District of California, Southern Division.

By Chas. N. Williams,
Deputy Clerk.

Allowed by OLIN WELLBORN,
District Judge.

I hereby certify that a copy of the within Writ of Error was, on the 17th day of March, 1914, lodged in the clerk's office of the District Court of the United States, Southern District of California,

*Page-number appearing at foot of page of original certified Record.

Southern Division, for the said plaintiff in error.

WM. M. VAN DYKE,

Clerk, U. S. District Court, Southern District of
California, Southern Division.

By Chas. N. Williams,

Deputy Clerk. [6]

[Endorsed]: No. 1419. In the United States District Court, Ninth Circuit, Southern District of California. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Writ of Error. Filed Mar. 17, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [7]

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

**Citation on Writ of Error [Sued Out by Rialto
Irrigation District (Original)].**

United States of America—ss.

To N. W. Stowell, Greeting:

You are hereby cited and admonished to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be held in the city of San Francisco, in the State of California, on the 14 day of April, A. D. 1914, pursuant to a writ of

error on file in the clerk's office of the District Court of the United States, for the Southern District of California, Southern Division, in that certain action No. 1419, wherein the Rialto Irrigation District is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment given, made and rendered against the said Rialto Irrigation District, in the said writ of error mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable OLIN WELLBORN, United States District Judge, for the Southern District of California, Southern Division, this 17th day of March, 1914, and of the Independence of the United States the one hundred and thirty-eighth.

OLIN WELLBORN,
United States District Judge for the Southern District of California, Southern Division. [8]

[Endorsed]: No. 1419. In the United States District Court, Ninth Circuit, Southern District of California. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Citation on Writ of Error. Received Copy of the Within Citation, and Waive Service of Writ of Error Herein this — day of April, 1914. Burt Chellis, J. W. Swanwick, Attys. for Plf. and Deft. in Error. Filed Apr. 8, 1914. Wm. M. Van Dyke, Clerk. By R. S. Zimmerman, Deputy Clerk. [9]

Names and Addresses of Attorneys.

For Plaintiff in Error:

HENRY GOODCELL, Esq., Old Postoffice
Block, San Bernardino, California; and
F. A. LEONARD, Esq., Old Postoffice Block,
San Bernardino, California.

For Defendant in Error:

BURT CHELLIS, Esq., Los Angeles, Cali-
fornia; and
J. W. SWANWICK, Esq., 1116-1118 Hi-
bernia Building, Los Angeles, California.

[10]

*In the District Court of the United States of Amer-
ica, in and for the Southern District of Cali-
fornia, Southern Division.*

C. C. No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

[11]

[Complaint.]

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

Comes now N. W. Stowell, plaintiff, and for cause of action against said defendant above named, complains and alleges as follows, namely:

FIRST COUNT.

I.

That the plaintiff aforesaid, N. W. Stowell, is an inhabitant of the city of El Paso, county of El Paso, and State of Texas.

II.

That said defendant is, and at all times hereinafter mentioned was, an irrigation district organized, incorporated and existing under and by virtue of an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7, 1887, and the several acts passed by the State legislature of the State of

California amendatory of and supplemental to said act; and said irrigation district is situated wholly within the county of San Bernardino, in said State of California.

III.

That said defendant, under and pursuant to the said act of the legislature, and by its board of directors and officers [12] thereunto duly authorized, issued a bond to said district, which was and is in the words and figures following:

Bond No. 426.

UNITED STATES OF AMERICA.

\$500.00.

STATE OF CALIFORNIA.

\$500.00.

Bond of the

RIALTO IRRIGATION DISTRICT.

Total Issue: \$500,000.00.

Located in San Bernardino County, Cal.

FOR VALUE RECEIVED, the RIALTO IRRIGATION DISTRICT, a public corporation, duly organized and existing under, and pursuant to the laws of the State of California, promises to pay to the bearer hereof, at the office of the treasurer of said district, the sum of (\$500) FIVE HUNDRED DOLLARS in gold coin of the United States, at the dates and upon installments as follows; at the expiration of eleven years from date, five (5) per cent of said sum; at the expiration of twelve years from date, six (6) per cent of said sum; at the expiration of thirteen years from date, seven (7) per cent of

said sum; at the expiration of fourteen years from date, eight (8) per cent of said sum; at the expiration of fifteen years from date, nine (9) per cent of said sum; at the expiration of sixteen years from date, ten (10) per cent of said sum; at the expiration of seventeen years from date, eleven (11) per cent of said sum; at the expiration of eighteen years from date, thirteen (13) per cent of said sum; at the expiration of nineteen years from date, fifteen (15) per cent of said sum; at the expiration of the twentieth year from date, a percentage sufficient to pay off said sum in full.

Said installments are to be paid as provided in, and only upon the surrender of the respective installment coupons, hereto attached. And said district promises to pay interest on the said principal at the rate of (6) six per cent per annum, payable in gold coin of the United States at the office of the treasurer of [13] said district semi-annually, on the first day of January and July, of each year upon the surrender of the respective interest coupons hereto attached. Both principal and interest are payable at par.

This bond is one of a series of bonds amounting in the aggregate to FIVE HUNDRED THOUSAND DOLLARS caused to be issued by the board of directors of said Rialto Irrigation District, and pursuant to a vote of the electors of said district at an election held for that purpose on the 15th day of November, 1890. The said series, of which this bond is one, is composed of one thousand bonds, each of the denomination of Five Hundred Dollars, and

said bonds are issued by authority of, pursuant to, and after a full compliance with all the requirements of the act of the Legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes." Approved March 7, 1887, and the acts amendatory and supplementary thereto.

The Rialto Irrigation District is composed of citrus producing lands divided into ten and twenty acre farms, irrigated by one thousand (1000) inches of water measured under a four inch pressure piped to each farm lot. All the said bonds and the interest thereon are to be paid by revenue derived from an annual tax upon the real property of the district, which tax is, and the said bonds are, by said act of the Legislature made a lien upon all said real property.

IN WITNESS WHEREOF said RIALTO IRRIGATION DISTRICT has caused these bonds to be issued and signed by its President and Secretary, and its corporate seal to be hereunto affixed, and the lithographed signature of its Secretary to be affixed to each of said coupons at the office of the Board of Directors in said district, this 17th day of November, A. D. 1890. [14]

RIALTO IRRIGATION DISTRICT.

By A. B. FOWLER,
President of Said Board.

By D. ROBINSON,
Secretary of Said Board.

[Seal of Rialto Irrigation District.]

IV.

That attached to said bond was, at the time of the issuance thereof, as aforesaid, a certain coupon No. 9, which said coupon was and is in the words and figures following, to wit:

\$15.00

RIALTO

No. 9

IRRIGATION DISTRICT

will pay

to the bearer at the

Office of the Treasurer of said District at the Town of Rialto, County of San Bernardino, State of California on JULY 1st, 1895, on surrender of this coupon the sum of

FIFTEEN DOLLARS

in U. S. Gold Coin being semi-annual interest on Bond No. 426.

D. ROBINSON,

Secretary.

Dated Nov. 17, 1890.

V.

That attached to said bond, was, at the time of the issuance thereof, as aforesaid, a certain installment coupon No. 1, which said coupon was and is in the words and figures following, to wit:

\$25.00

RIALTO

No. 1.

IRRIGATION DISTRICT

will pay

to the bearer at the

Office of the Treasurer of said District at the Town of Rialto, County of San Bernardino, State of California, on Jany. 1st, 1902, on surrender of this coupon the sum of

TWENTY-FIVE DOLLARS [15]

in U. S. Gold Coin being 1st installment of Principal on bond of said district. Interest on said installment will cease after maturity.

D. ROBINSON,
Secretary.

No. 426.

Dated Nov. 17, 1890.

VI.

That the apparent date of said bonds and coupons was, and is November 17, 1890, but that the said bonds and coupons were made payable as of the date of Jan. 1st, 1891, and bore interest from that date only; and that each and all of the interest coupons are for interest accruing on said bonds, in semi-annual installments, from Jan. 1st and July 1st of each year; and that the installments of principal fall due thereon beginning with Jan. 1st, 1902, and at the expiration of eleven years from Jan. 1st, 1891.

VII.

That subsequent to the issuance of said bond and coupons and prior to the commencement of this action, this plaintiff, did, in good faith, and in the ordinary course of business, and for value before the apparent maturity of the said bond or coupons, and without knowledge of their actual dishonor or any defense thereto, if any such existed, purchase said bond and also the coupons thereto attached including interest coupon No. 9 and installment coupon No. 1 hereinbefore described, and ever since has been and now is the owner and holder of said bond and all of said coupons.

VIII.

That said interest coupon No. 9 has not been paid, nor has any part thereof been paid; that there is now due and unpaid to the plaintiff on said coupon the sum of \$15.00 with interest thereon at the rate of 7% per annum from the first day of July, 1895.
[16]

IX.

That said installment coupon No. 1 has not been paid, nor has any part thereof been paid; that there is now due and unpaid to the plaintiff on said coupon the sum of \$25.00 with interest thereon at the rate of 7% per annum from the first day of January, 1902.

SECOND COUNT.

I.

Repeats and makes a part hereof paragraph I and II in the previous count of this complaint, and further alleges:

II.

That heretofore, to wit, on or about the 17th day of November, 1890, said Rialto Irrigation District, under and pursuant to the said act of the legislature of the State of California, approved March 7, 1887, and the several acts passed amendatory of and supplemental to said act, and by its Board of Directors and officers thereunto duly authorized, authorized the execution of certain bonds of said irrigation district, which said bonds were of the same tenor and effect as the bond hereinbefore set forth in the first count of this complaint, with the exception of the numbers thereof, and which said bonds were issued

thereafter on January 1st, 1891, and were respectively numbered as follows, to wit: 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473.

III.

That there were attached to each of the aforesaid bonds, at the time of their issuance, certain interest coupons, each of which was of the same tenor and effect, and made and executed in the same form and manner as the coupon specifically described in [17] the first count of this complaint, differing only in the numbers thereof, the amount of money promised to be paid therein and date of maturity; that of said coupons all those hereinafter specifically described were, by the terms thereof, payable prior to the commencement of this action; that 1238 of said interest coupons, in addition to the interest coupon specifically described in the first count of this complaint, were, at the time of the issuance thereof, attached to the aforesaid designated bonds, as follows, to wit: to each of said bonds were attached forty-eight (48) of said interest coupons, numbered respectively 10 to 34 inclusive, and to thirty-nine (39) of said bonds numbered respectively 426 to 464 inclusive, were also attached a coupon numbered nine (9).

IV.

That there were attached to each of the aforesaid bonds, at the time of their issuance, certain install-

ment coupons, each of which was of the same tenor and effect, and made and executed in the same form and manner as the installment coupon specifically described in the first count of this complaint, differing only in the numbers thereof, the amount of money promised to be paid therein and date of maturity; that of said installment coupons all those hereinafter specifically described were, by the terms thereof, payable prior to the commencement of this action; that 335 of said installment coupons, in addition to the installment coupon specifically described in the first count of this complaint, were, at the time of the issuance thereof, attached to the aforesaid designated bonds as follows, to wit: to each of said bonds were attached seven (7) of said installment coupons, numbered respectively, one (1) to seven (7), inclusive.

V.

That subsequent to the issuance of said bonds and coupons and prior to the commencement of this action, this plaintiff, did, [18] in good faith, and in the ordinary course of business and for value, before the apparent maturity of the said bonds or coupons and without knowledge of their actual dishonor, purchase the aforesaid 47 bonds and the aforesaid 1238 interest coupons and the aforesaid 335 installment coupons, in addition to the bond and coupons hereinbefore specifically set forth in the first count of this complaint, and ever since has been and now is the owner and holder of all of said bonds and coupons.

VI.

Plaintiff further avers that on or after the several respective days and times when said coupons matured and became due and payable, he presented each of them to the Treasurer of said Rialto Irrigation District for payment and demanded payment thereof; each and all of his demands were then and there by said Treasurer refused.

VII.

That said bonds and coupons have not been paid, nor has any part of any one of said bonds or coupons been paid; that there is now due, owing and unpaid on said 1238 interest coupons the sum of \$16,554, with interest thereon at the rate of seven per cent per annum from the date when each of said interest coupons respectively fell due, and there is now due, owing and unpaid on said 335 installment coupons the sum of \$13,415, with interest thereon at the rate of seven per cent (7%) per annum from the date when each of said installment coupons respectively fell due.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of \$30,009.00, together with interest as aforesaid, and costs of suit.

BURT CHELLIS,

Attorney for Plaintiff.

State of California,
County of Los Angeles,—ss.

N. W. Stowell, being first duly sworn, [19] deposes and says: That he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge, except matters

and things therein stated on information and belief and as to those matters he believes it to be true.

N. W. STOWELL.

Subscribed and sworn to this 25th day of June, 1908, before me:

[Seal]

ZENA B. WALES,

Notary Public, in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 1419. *Dept.* In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Filed Jun. 27, 1908. Wm. M. Van Dyke, Clerk. ———, Deputy. Burt Chellis, Atty. for Plaintiff. [20]

[Demurrer to Complaint.]

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

The defendant Rialto Irrigation District demurs to the complaint in this action, and to each and every count thereof, upon ground that said complaint does not, nor does each or any count thereof, state facts

sufficient to constitute any cause of action.

WHEREFORE, the defendant prays to be hence dismissed, with judgment against the plaintiff for costs.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant.

[Endorsed]: No. 1419. In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Demurrer to Complaint. Filed Oct. 9, 1908. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Henry Goodcell, F. A. Leonard, San Bernardino, Calif., Attorneys for Defendant. [21]

[Order Sustaining Demurrer to Complaint, etc.]

At a stated term, to wit, the July Term, A. D. 1909, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom, in the city of Los Angeles, on Monday, the twelfth day of July, in the year of our Lord one thousand nine hundred and nine. Present: The Honorable OLIN WELLBORN, District Judge.

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Defendant.

This cause having heretofore been submitted to the Court for its consideration and decision upon defendant's demurrer to plaintiff's complaint, and the Court having duly considered the same and being fully advised in the premises, it is now on this 12th day of July, 1909, being a day in the July Term, A. D. 1909, of said Circuit Court, ordered, that said demurrer be, and the same hereby is, sustained, to which ruling of the Court, plaintiff by his counsel, notes and is allowed an exception, which is hereby entered herein; it is further ordered on application of counsel for plaintiff, that said plaintiff have thirty days in which to amend his said complaint if so advised. [22]

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Defendant.

Amended Complaint.

Comes now N. W. Stowell, plaintiff, and for cause of action against said defendant above named, complains and alleges as follows, namely:

FIRST COUNT.

I.

That the plaintiff aforesaid, N. W. Stowell, was upon the 25th day of June, 1908, now is and at all of the times hereinafter alleged, has been, a citizen of the State of Texas.

II.

That said defendant is, and at all times hereinafter mentioned was, an irrigation district organized, incorporated and existing under and by virtue of an act of the legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes," approved March 7, 1887, and the several acts, passed by the state legislature of the State of California amendatory of and supplemental to said act; and said irrigation district is situated wholly within the County of San Bernardino in said State of California.

III.

That said defendant, under and pursuant to the said act of the legislature, and by its board of directors and officers thereunto [23] duly authorized, issued a bond of said district, which was and is in the words and figures following:

Bond No. 426.

UNITED STATES OF AMERICA.

\$500.00.

STATE OF CALIFORNIA.

\$500.00.

Bond of the

RIALTO IRRIGATION DISTRICT.

Total Issue: \$500,000.00.

Located in

San Bernardino County, Cal.

FOR VALUE RECEIVED, the RIALTO IRRIGATION DISTRICT, a public corporation, duly organized and existing under, and pursuant to the laws of the State of California, promises to pay to the bearer hereof, at the office of the treasurer of said district, the sum of (\$500) FIVE HUNDRED DOLLARS in gold coin of the United States, at the dates and upon installments as follows: at the expiration of eleven years from date, five (5) per cent of said sum; at the expiration of twelve years from date, six (6) per cent of said sum; at the expiration of thirteen years from date seven (7) per cent of said sum; at the expiration of fourteen years from date, eight (8) per cent of said sum; at the expiration of fifteen years from date, nine (9) per cent of said sum; at the expiration of sixteen years from date, ten (10) per cent of said sum; at the expiration of seventeen years from date, eleven (11) per cent of said sum; at the expiration of eighteen years from date, thirteen (13) per cent of said sum; at the expiration of nineteen years

from date, fifteen (15) per cent of said sum; and at the expiration of the twentieth year from date, a percentage sufficient to pay off said sum in full.

Said installments are to be paid as provided in, and only upon the surrender of the respective installment coupons, hereto attached. And said district promises to pay interest on the said [24] principal at the rate of (6) six per cent per annum, payable in gold coin of the United States at the office of the treasurer of said district semi-annually, on the first day of January and July of each year upon the surrender of the respective interest coupons hereto attached. Both principal and interest are payable at par.

This bond is one of a series of bonds amounting in the aggregate to FIVE HUNDRED THOUSAND DOLLARS caused to be issued by the board of directors of said Rialto Irrigation District, and pursuant to a vote of the electors of said district at an election held for that purpose on the 15th day of November, 1890. The said series, of which this bond is one, is composed of one thousand bonds, each of the denomination of Five Hundred Dollars, and said bonds are issued by authority of, pursuant to, and after a full compliance with all the requirements of the act of the Legislature of the State of California, entitled "An act to provide for the organization and government of irrigation districts, and to provide for the acquisition of water and other property, and for the distribution of water thereby for irrigation purposes." Approved March 7, 1887, and the acts amendatory and supplementary thereto.

The Rialto Irrigation District is composed of citrus producing lands divided into ten and twenty acre farms, irrigated by one thousand (1,000) inches of water measured under a four-inch pressure piped to each farm lot. All the said bonds and the interest thereon are to be paid by revenue derived from an annual tax upon the real property of the district, which tax is, and the said bonds are by said act of the legislature made a lien upon all said real property.

IN WITNESS WHEREOF said RIALTO IRRIGATION DISTRICT has caused these bonds to be issued and signed by its President and Secretary, and its corporate seal to be hereunto affixed, and the lithographed signature of its Secretary to be affixed to each of [25] said coupons at the office of the Board of Directors in said District, this 17th day of November, A. D. 1890.

RIALTO IRRIGATION DISTRICT,

By A. B. FOWLER,
President of Said Board.

By D. ROBINSON,
Secretary of Said Board.

[Seal of Rialto Irrigation District.]

IV.

That attached to said bond, was, at the time of the issuance thereof, as aforesaid, a certain coupon No. 9, which said coupon was and is in the words and figures following, to wit:

\$15.00

RIALTO

No. 9

IRRIGATION DISTRICT

will pay

to the bearer at the

Office of the Treasurer of said District at the Town of Rialto, County of San Bernardino, State of California, on July 1st, 1895, on surrender of this coupon the sum of

FIFTEEN DOLLARS

in U. S. Gold Coin being semi-annual interest on Bond No. 426.

D. ROBINSON,
Secretary.

Dated Nov. 17, 1890.

V.

That attached to said bond, was, at the time of the issuance thereof, as aforesaid, a certain installment coupon No. 1, which said coupon was and is in the words and figures following, to wit:

\$25.00

RIALTO

No. 1

IRRIGATION DISTRICT

will pay

to the bearer at the [26]

Office of the Treasurer of said District at the Town of Rialto, County of San Bernardino, State of California, on Jany. 1st, 1902, on surrender of this coupon the sum of

TWENTY-FIVE DOLLARS

in U. S. Gold Coin being 1st installment of Principal

on bond of said district. Interest on said installment will cease after maturity.

D. ROBINSON,
Secretary.

No. 426.

Dated Nov. 17, 1890.

VI.

That the apparent date of said bonds and coupons was, and is, November 17, 1890, but that the said bonds and coupons were made payable as of the date of Jan. 1st, 1891, and bore interest from that date only; and that each and all of the interest coupons are for interest accruing on said bonds, in semi-annual installments, from Jan. 1st and July 1st of each year; and that the installments of principal fall due thereon beginning with Jan. 1st, 1902, and at the expiration of eleven years from Jan. 1st, 1891.

VII.

That subsequent to the issuance of said bond and coupons and prior to the commencement of this action, this plaintiff, did, in good faith, and in the ordinary course of business, and for value before the apparent maturity of the said bond or coupons, and without knowledge of their actual dishonor or any defense thereto, if any such existed, purchase said bond and also the coupons thereto attached including interest coupon No. 9 and installment coupon No. 1 hereinbefore described, and ever since has been and now is the owner and holder of said bond and all of said coupons. [27]

VIII.

That said interest coupon No. 9 has not been paid,

nor has any part thereof been paid; that there is now due and unpaid to the plaintiff on said coupon the sum of \$15.00 with interest thereon at the rate of 7% per annum from the first day of July, 1895.

IX.

That said installment coupon No. 1 has not been paid, nor has any part thereof been paid; that there is now due and unpaid to the plaintiff on said coupon the sum of \$25.00 with interest thereon at the rate of 7% per annum from the first day of January, 1902.

X.

That the apparent date of said bonds "November 17th, 1890" could not have been the actual or real date of their issue for the reason that the meeting of the Board of Directors of the defendant corporation, at which they voted to issue said bonds in their present form, was not held until the 21st day of said November, 1890.

That said defendant corporation well knew that the date of issue of said bonds was January 1st, 1891, and in accordance with that knowledge and understanding paid the first six interest coupons that were presented for payment on all of the bonds and also paid the seventh interest coupon on a portion of the bonds, on presentation.

XI.

That upon the 12th day of December, 1890, the Board of Directors of the defendant corporation, brought an action in the Superior Court of said County of San Bernardino, State of California, to determine the validity of said bonds; that thereafter,

to wit: upon the 3d day of January, 1891, said Superior Court, by a judgment duly given and made in said action so brought by said Board of Directors, declared said bonds to be valid. [28]

SECOND COUNT.

I.

Repeats and makes a part hereof paragraph I and II in the previous count of this complaint, and further alleges:

II.

That heretofore, to wit, on or about the 17th day of November, 1890, said Rialto Irrigation District, under and pursuant to the said act of the legislature of the State of California, approved March 7, 1887, and the several acts passed amendatory of and supplemental to said act, and by its Board of Directors and officers thereunto duly authorized, authorized the execution of certain bonds of said irrigation district, which said bonds were of the same tenor and effect as the bond hereinbefore set forth in the first count of this complaint with the exception of the numbers thereof, and which said bonds were issued thereafter on January 1st, 1891, and were respectively numbered as follows, to wit: 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473.

III.

That there were attached to each of the aforesaid bonds, at the time of their issuance certain interest coupons, each of which was of the same tenor and

effect, and made and executed in the same form and manner as the coupon specifically described in the first count of this complaint, differing only in the numbers thereof, the amount of money promised to be paid therein and date of maturity; that of said coupons all those hereinafter specifically described were, by the terms thereof, payable prior to the commencement of this action; that 1,238 of said interest coupons, in addition to the interest coupon specifically described in the [29] first count of this complaint, were, at the time of the issuance thereof, attached to the aforesaid designated bonds, as follows, to wit, to each of said bonds were attached forty-eight (48) of said interest coupons, numbered respectively 10 to 34 inclusive, and to thirty-nine (39) of said bonds numbered respectively 426 to 464, inclusive, were also attached a coupon numbered nine (9).

IV.

That there were attached to each of the aforesaid bonds, at the time of their issuance, certain installment coupons, each of which was of the same tenor and effect, and made and executed in the same form and manner as the installment coupon specifically described in the first count of this complaint, differing only in the numbers thereof, the amount of money promised to be paid therein and date of maturity; that of said installment coupons all those hereinafter specifically described were, by the terms thereof, payable prior to the commencement of this action; that 335 of said installment coupons, in addition to the installment coupon specifically de-

scribed in the first count of this complaint, were, at the time of the issuance thereof, attached to the aforesaid designated bonds as follows, to wit: to each of said bonds were attached (7) seven of said installment coupons, numbered respectively, one (1) to seven (7), inclusive.

V.

That subsequent to the issuance of said bonds and coupons, and prior to the commencement of this action, this plaintiff, did, in good faith, and in the ordinary course of business and for value, before the apparent maturity of the said bonds or coupons and without knowledge of their actual dishonor, purchase the aforesaid 47 bonds and the aforesaid 1238, interest coupons and the aforesaid 335 installment coupons, in addition to the bond and coupons hereinbefore specifically set forth in the first count of this complaint, and ever since has been and now is the [30] owner and holder of all of said bonds and coupons.

VI.

Plaintiff further avers that on or after the several respective days and times when said coupons matured and became due and payable, he presented each of them to the treasurer of said Rialto Irrigation District for payment and demanded payment thereof; each and all of his demands were then and there by said treasurer refused.

VII.

That said bonds and coupons have not been paid, nor has any part of any one of said bonds or coupons been paid; that there is now due, owing and un-

paid on said 1238 interest coupons the sum of \$16,554, with interest thereon at the rate of seven per cent per annum from the date when each of said interest coupons respectively fell due, and there is now due, owing and unpaid on said 335 installment coupons the sum of \$13,415, with interest thereon at the rate of seven per cent (7%) per annum from the date when each of said installment coupons respectively fell due.

WHEREFORE, plaintiff prays judgment against said defendant in the sum of \$30,009.00, together with interest as aforesaid, and costs of suit.

BURT CHELLIS,
Attorney for Plaintiff.

State of California,
County of Los Angeles,—ss.

N. W. Stowell, being first duly sworn, deposes and says: That he has read the foregoing complaint and knows the contents thereof and that the same is true of his own knowledge except matters and things therein stated on information and belief, and as to those matters he believes it to be true.

N. W. STOWELL.

Subscribed and sworn to [31] this 22d day of November, 1909, before me:

[Seal] W. E. STOWELL,
Notary Public, in and for the County of Los Angeles,
State of California.

[Endorsed]: No. 1419. In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, a Corpora-

tion, Defendant. Amended Complaint. Received Copy of the Within Amended Complaint this 27th Day of December, 1909. Henry Goodcell, F. A. Leonard, Attys. for Dft. Filed Dec. 29, 1909. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Burt Chellis, Atty. for Plaintiff, 615 I. W. Hellman Bldg., L. A., F7372 Main 1086. [32]

[Demurrer to Amended Complaint.]

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

The defendant Rialto Irrigation District demurs to the amended complaint in this action, and to each and every count thereof, upon the ground that said amended complaint does not, nor does each or any count thereof, state facts sufficient to constitute any cause of action.

WHEREFORE, the defendant prays to be hence dismissed, with judgment against the plaintiff for costs.

HENRY GOODCELL,
F. A. LEONARD,
Attorneys for Defendant.

We hereby certify that in our opinion the foregoing demurrer is well founded in point of law.

HENRY GOODCELL,
F. A. LEONARD,
Attorneys for Defendant.

[Endorsed]: No. 1419. In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Demurrer to Amended Complaint. Filed Jan. 25, 1910. Wm. M. Van Dyke, Clerk. Chas. N. Williams, Deputy. Goodcell & Leonard, Attys. for Defendant. [33]

**[Order Overruling Demurrer to Amended
Complaint.]**

At a stated term, to wit, the January Term, A. D. 1911, of the Circuit Court of the United States of America, of the Ninth Judicial Circuit, in and for the Southern District of California, Southern Division, held at the courtroom in the city of Los Angeles, on Thursday, the twentieth day of April, in the year of our Lord one thousand nine hundred and eleven. Present: The Honorable OLIN WELLBORN, District Judge.

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,
tion,

Defendant.

This cause having heretofore been submitted to the Court for its consideration and decision on the demurrer of defendant to the amended complaint, and the Court having duly considered the same, and being fully advised in the premises, it is now, on this 20th day of April, A. D. 1911, being a day in the January Term, A. D. 1911, of said Circuit Court, ordered, that the said demurrer to the amended complaint be, and the same hereby is overruled. [34]

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

Amended Answer to Amended Complaint.

Comes now the defendant and by leave of court first had, makes this amended answer to the amended complaint in this action and to each and every cause of action therein alleged, as follows:

I.

The defendant, upon its information and belief, denies that on June 25, 1908, or at the time of the commencement of this action, or at any of the times mentioned in said amended complaint, the plaintiff was or has been, or that he now is, a citizen of the State of Texas.

II.

Defendant admits that it was and is an irrigation district, as alleged in said amended complaint.

III.

Admits that the board of directors and officers of the defendant, acting in the name of the defendant, issued the bonds referred to in said amended complaint; but denies that said directors and officers, or any of them, were lawfully authorized, or had lawful power, to issue said bonds, or any of them, as bonds of the defendant; and denies that said bonds or any of them were issued pursuant to the alleged act or acts of the legislature of the State of California; and [35] denies that the defendant, by or through its said board of directors and officers, or otherwise or at all, ever lawfully issued said bonds or any of them; and denies that said bonds or any of them are, or ever were, lawful or binding acts or obligations of the defendant.

IV.

Admits that said bonds were and are in words and figures as set forth in said amended complaint, and that said bonds had attached thereto coupons for the interest and for installments of principal as alleged, and in words and figures as set forth.

V.

Alleges that each of said bonds, at the time of its execution, had attached thereto interest coupons for the several installments of semi-annual interest that should accrue thereon, numbered successively beginning with No. 1, and that the first of said coupons was, by its terms, made payable on July 1, 1891,

for the amount of \$15.00, being the amount of the first installment of semi-annual interest, and the remainder of said coupons were, by their terms, made payable successively on January 1, and July 1 of each year from and after that date.

VI.

Alleges that each of said bonds, at the time of its execution, had attached thereto coupons for the several installments of principal that should become due thereon, numbered successively beginning with No. 1 and that the first of said installment coupons was, by its terms, made payable on January 1, 1902, and the remainder of said installment coupons were, by their terms made payable successively on January 1 of each year thereafter. [36]

VII.

Alleges that all said interest coupons were identical in form with the interest coupons set forth in said amended complaint and that all said installment coupons were identical in form with the installment coupons set forth in said amended complaint.

VIII.

Denies that the apparent date of said bonds and coupons, or of any of said bonds or coupons, as distinguished from their actual or true date, was or is November 17, 1890; and alleges that November 17, 1890, was and is the actual and true date of each and all of said bonds and coupons.

IX.

Denies that said bonds and coupons, or any of said bonds or coupons, were made payable as of the date

of January 1, 1891; and alleges that each and all of said bonds and coupons were made payable as of the date of November 17, 1890.

X.

Denies, upon information and belief, that the defendant purchased or acquired all or any of said bonds, or all or any of said interest coupons, or all or any of said installment coupons, alleged or set forth in said amended complaint, in good faith, or in the ordinary course of business or for value, or before the apparent maturity of such bond or coupon, or without knowledge of the actual dishonor of such bond or coupon, or without knowledge of any defense thereto, or that the defendant is now or ever has been the owner or holder of such bond or coupon, or of any of the bonds or coupons alleged in said amended complaint.

XI.

Admits that the meeting of the board of directors of the defendant, at which they voted to issue said bonds in their present form, was not held until November 21, 1890, but [37] denies that for that reason, the date said bonds bear, to wit, November 17, 1890, could not have been their actual or real date, and alleges that November 17, 1890, was and is the actual and real date of each and all of said bonds, and of each and all of said coupons.

XII.

Denies that the defendant well knew, or knew at all, that the date of said bonds, or any of them, was January 1, 1891, or that the date of issue of said bonds, or any of them, was January 1, 1891, and

denies that such was the date of said bonds, or any of them, and denies that such was the date of issue of said bonds, or any of them; and denies that in accordance with that knowledge or with that understanding the defendant paid any interest coupons on or pertaining to any of said bonds.

XIII.

Admits that on December 12, 1890, the Board of Directors of the defendant brought an action in the Superior Court of the County of San Bernardino, State of California, but denies that said action was brought to determine the validity of said bonds, or any of them, and alleges that said action was brought solely for the purpose of determining the regularity and validity of certain proceedings preliminary to and providing for and authorizing an issue of bonds by the defendant; and denies that the alleged judgment in said action was duly given and made, or duly given or made; and denies that said judgment declared said bonds, or any of them, to be valid; and denies that the validity of said bonds, or any of them, was adjudged or adjudicated in said action.

XIV.

For further answer, the defendant alleges that none of said bonds were delivered for value, or delivered [38] at all, to any purchaser or taker, on November 17, 1890, or on January 1, 1891, or at the time of their actual date or their apparent date or their alleged date, and none of them bear date at the time of their issue; that none of said bonds are negotiable in form, or in the form required by the statute under which they are alleged to have been

issued; that none of said bonds are made payable in the time prescribed by such statute; that none of said bonds were issued for a lawful consideration, but each and all of them were issued for a consideration which, wholly or in great part, consisted in the doing of construction work for the defendant; and that by reason of the facts here stated, each and all of said bonds and coupons were and are invalid and void.

XV.

Alleges, upon information and belief, that the plaintiff, in so far as he ever purchased or acquired all or any of the bonds or coupons alleged in said amended complaint, purchased and acquired the same with notice and knowledge of each and all of the facts hereinbefore alleged.

For a second, separate and further defense to each and every of plaintiff's alleged cause of action, defendant alleges that the bonds and each of them, referred to in each of said first causes of action alleged in said complaint, did not bear date at the time of their issue nor were said bonds or any of them by their terms, made payable in the time prescribed for their payment by the Act of the Legislature of the State of California, under and in pursuance of which, it is alleged in said cause of action, said bonds were issued and defendant further alleges that said bonds and each of them were not issued for a valid, sufficient, lawful or adequate consideration. [39]

For a third, further and separate defense to each and every of plaintiff's alleged causes of action, de-

fendant alleges that each of said causes of action alleged in said complaint, as to all coupons, including both interest and principal coupons, which, by their terms, were payable four years or more before the commencement of this action, are barred by the provisions of Section 443 and by the provisions of Subdivision I of Section 337 and of Subdivision I of Section 338 of the Code of Civil Procedure of the State of California.

WHEREFORE, the defendant prays judgment that the plaintiff take nothing, and for costs.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant.

State of California,

County of San Bernardino,—ss.

S. J. Bunting, being duly sworn, on oath says: That he is the Secretary of the Rialto Irrigation District, the defendant named in the foregoing amended answer to amended complaint, and makes this affidavit on behalf of said defendant; that he has read the foregoing amended answer and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated on information and belief, and as to those matters, he believes it to be true.

[Seal]

S. J. BUNTING.

Subscribed and sworn to before me this 8th day of June, 1912.

M. A. KERR,

Notary Public in and for the County of San Bernardino, State of California. [40]

We certify that in our opinion, the foregoing amended answer, as to the whole thereof, and as to each and every cause of action referred to therein, is well founded in point of law.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant.

[Endorsed]: Original. No. 1419. In the United States Circuit Court, Ninth Circuit, Southern District of California. N. W. Stowell vs. Rialto Irrigation District, a Corp. Amended Answer to Amended Complaint. Received Copy of the Within Amd. Answer this 10th day of June, 1912. Burt Chellis, Harris & Swanwick, Attys. for Plff. Filed Jun. 10, 1912. Wm. M. Van Dyke, Clerk. By Murray C. White, Deputy Clerk. Henry Goodcell and F. A. Leonard, Postoffice Block, San Bernardino, Cal. [41]

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

#1419.

N. W. STOWELL,

Plaintiff.

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

Stipulation [Concerning Filing of Amended or Supplemental Complaint, etc.].

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties to the above-entitled action that the plaintiff may file an amended or supplemental complaint herein within 7 days from date hereof, setting up an additional cause of action based upon any coupons which were originally attached to any of the bonds owned by said plaintiff, N. W. Stowell, at the time this suit was commenced, the time of payment of which said coupons was prior to the first day of July, 1912, and not already sued upon, and that said amended and supplemental complaint may be deemed denied, and that defendants may be deemed to have filed all the defenses thereto which have been filed to any original or amended complaint heretofore filed herein.

BURT CHELLIS,

Attorney for Plaintiff.

HENRY GOODCELL and

F. A. LEONARD,

Attorneys for Defendant. [42]

Dated June 29th, 1912.

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

#1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

Stipulation [Concerning Filing of Amended or Supplemental Complaint, etc.].

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties to the above-entitled action that the plaintiff may file an amended or supplemental complaint herein within — days from date hereof, setting up an additional cause of action based upon any coupons which were originally attached to any of the bonds referred to in the original or amended complaint herein, the time of payment of which said coupons having accrued subsequent to the coupons mentioned in said original or amended complaint on or prior to the 1st day of July, 1912, and that said amended and supplemental complaint may be deemed denied, and that defendants may be deemed to have filed all the defenses thereto which have been filed to any original or amended complaint heretofore filed herein.

Dated June —, 1912.

BURT CHELLIS,
HARRIS & SWANWICK,
Attorneys for Plaintiff.
HENRY GOODCELL and
F. A. LEONARD,
Attorneys for Defendant.

[Endorsed]: C. C. No. 1419. In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Stipulation. Filed Jul. 5, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk.
[43]

In the Circuit Court of the United States, Ninth Circuit, in and for the Southern District of California, Southern Division.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

Supplemental Complaint.

Leave of Court being first duly had and obtained, comes now the plaintiff and files this supplemental complaint, as follows:

I.

By adding a THIRD COUNT to said complaint, as follows, viz.:

THIRD COUNT.

I.

Repeats and makes a part hereof Paragraph I, II and II, VI, VII, X and XI in the FIRST COUNT of said complaint, and further alleges:

II.

That attached to said bond, was, at the time of the issuance thereof, as aforesaid, a certain coupon No. 35, which said coupon was and is in the words and figures following, to wit:

\$6.60

RIALTO

No. 35

IRRIGATION DISTRICT

will pay

to the bearer at the

Office of the Treasurer of said District at the Town of Rialto, County of San Bernardino, State of California, on July 1st, 1908, on surrender of this coupon the sum of

SIX 60/100 DOLLARS

in U. S. Gold Coin being semi-annual interest on Bond No. 426.

D. ROBINSON,

Secretary.

Dated Nov. 17, 1890. [44]

III.

That attached to said bond, was, at the time of the issuance thereof, as aforesaid a certain installment coupon No. 8, which said coupon was and is in the words and figures following, to wit:

\$65.00

RIALTO

No. 8

IRRIGATION DISTRICT

will pay

to the bearer at the

Office of the Treasurer of said District at the Town of Rialto, County of San Bernardino, State of California, on Jany. 1st, 1909, on surrender of this coupon the sum of

SIXTY-FIVE DOLLARS

in U. S. Gold Coin being 1st installment of Principal on bond of said District. Interest on said installment will cease after maturity.

D. ROBINSON,

Secretary.

No. 426.

Dated Nov. 17, 1890.

IV.

Repeats and makes a part hereof Paragraph II in SECOND COUNT of this complaint, and further alleges:

V.

That heretofore, to wit: on or about the 17th day of November, 1890, said Rialto Irrigation District, under and pursuant to the said act of the legislature of the State of California approved March 7, 1887, and the several acts passed amendatory of and supplemental to said act, and by its Board of Directors and officers thereunto duly authorized, authorized the execution of certain bonds of said irrigation district, which said bonds were of the same tenor and effect as the bond hereinbefore set forth in the first count of this complaint, with the exception of the numbers

thereof, and which said bonds were issued [45] thereafter on January 1st, 1891, and were respectively numbered as follows, to wit: #77, 78, 234, 665, 666, 667, 798, 894, 895, 896, 989.

VI.

That there were attached to each of the aforesaid bonds, at the time of their issuance, certain interest coupons, each of which was of the same tenor and effect, and made and executed in the same form and manner as the coupons specifically described in this complaint, as above set forth, differing only in the numbers thereof, the amount of money promised to be paid therein and date of maturity; that of said coupons all those hereinafter specifically described were, by the terms thereof, payable prior to the commencement of this action; that 577 of said interest coupons, in addition to the interest coupon specifically described in this complaint as above set forth, were, at the time of the issuance thereof, attached to the aforesaid designated bonds, as follows, to wit, to each of said bonds were attached six (6) of said interest coupons, numbered respectively 35-40, inclusive; to each of said bonds Nos. 77, 78, 234, 665, 666, 667, 798, 894, 895, 896 and 989 were attached fourteen (14) of said interest coupons, numbered respectively 21-34, inclusive; to each of said bonds Nos. 77, 78, 894, 895, 896 and 989 were attached nine (9) of said interest coupons, numbered respectively 12-20, inclusive; to each of said bonds Nos. 894, 895, 896 and 989 were attached two (2) of said interest coupons, numbered respectively 10 and 11; to each of said bonds Nos. 234, 665, 666, 667 and 798 were

attached one of said interest coupons, numbered 9; to each of said bonds Nos. 665, 666 and 667 were attached one of said interest coupons numbered 8.

VII.

That there were attached to each of the aforesaid bonds, at the time of their issuance, certain installment coupons, each [46] of which was of the same tenor and effect, and made and executed in the same form and manner as the installment coupon specifically described in this complaint as above set forth, differing only in the numbers thereof, the amount of money promised to be paid therein and date of maturity; that of said installment coupons, all those hereinafter specifically described, were, by the terms thereof, payable prior to the commencement of this action; that 253 of said installment coupons, in addition to the installment coupon specifically described in this complaint as above set forth, were, at the time of the issuance thereof, attached to the aforesaid designated bonds as follows, to wit, to each of said bonds were attached three (3) of said installment coupons, numbered respectively 8, 9 and 10; to each of said bonds Nos. 77, 78, 234, 665, 666, 667, 798, 894, 895, 896 and 989 were attached seven (7) of said installment coupons numbered 1-7 respectively.

VIII.

That subsequent to the issuance of said bonds and coupons, and prior to the commencement of this action, this plaintiff, did, in good faith, and in the ordinary course of business and for value before the apparent maturity of the said bonds or coupons and without knowledge of their actual dishonor, pur-

chase the aforesaid 59 bonds and the aforesaid 578 interest coupons and the aforesaid 254 installment coupons, in addition to the bonds and coupons hereinbefore specifically set forth in the first and second counts of this complaint, and ever since has been and now is the owner and holder of all of said bonds and coupons.

IX.

Plaintiff further avers that on or after the several respective days and times when said coupons matured and became due and payable, each of them were presented to the Treasurer of said Rialto Irrigation District for payment, and demanded payment thereof; [47] each and all of said demands were then and there by said Treasurer refused.

X.

That said bonds and coupons have not been paid, nor has any part of any one of said bonds or coupons been paid; that there is now due, owing and unpaid on said 578 interest coupons the sum of \$4,508.70, with interest thereon at the rate of seven per cent (7%) per annum from the date when each of said interest coupons respectively fell due, and there is now due, owing and unpaid on said 254 installment coupons the sum of \$16,060.00, with interest thereon at the rate of seven per cent (7%) per annum from the date when each of said installment coupons respectively fell due.

XI.

That said defendant did not provide any funds for the payment of any of said above mentioned interest or installment coupons and had no funds with which

to pay the same, either at the time that they became due or at any time thereafter.

WHEREFORE, Plaintiff prays judgment against said defendant in the sum of FIFTY THOUSAND FIVE HUNDRED SEVENTY-SEVEN and 70/100 DOLLARS (\$50,577.70), together with interest as aforesaid, and costs of suit.

BURT CHELLIS,

Attorney for Plaintiff. [48]

State of California,

County of Los Angeles,—ss.

N. W. Stowell, being first duly sworn, deposes and says: That he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge except matters and things therein stated on information and belief, and as to those matters, he believes it to be true.

N. W. STOWELL.

Subscribed and sworn to this 5th day of July, A. D. 1912, before me:

[Seal]

W. E. STOWELL,

Notary Public in and for the County of Los Angeles,
State of California.

[Endorsed]: C. C. No. 1419. In the United States Circuit Court, Ninth Circuit, Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Supplemental Complaint. Filed Jul. 5, 1912. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Burt Chellis, Atty. for Plff., 901 Higgins Bldg., Los Angeles, Cal., F6521 or Main 2661. [49]

*In the District Court of the United States for the
Southern District of California, Southern Divi-
sion.*

C. C. No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

Findings.

This cause having been regularly tried and submitted to the Court, and the Court having considered and being now fully advised in the premises, finds the issues for the plaintiff and directs that a judgment be entered for the plaintiff for the sum of Fifty Thousand Five Hundred Seventy-seven and 70/100 (\$50,577.70) Dollars.

OLIN WELLBORN,

Judge of the District Court.

Dated 4th of October, 1913.

[Endorsed]: C. C. No. 1419. United States District Court, Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Findings. Dated — of October, 1913. Filed October 4, 1913. Wm. M. Van Dyke, Clerk. By C. E. Scott, Deputy Clerk.

[50]

UNITED STATES OF AMERICA.

District Court of the United States, Southern District of California, Southern Division.

C. C. No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

Judgment.

This cause having come on regularly on the 16th day of July, 1912, for hearing and trial before the Court without a jury, a trial by jury having been waived by the stipulation heretofore filed by respective parties; Burt Chellis, Esq., and J. W. Swanwick, Esq., appearing as counsel for plaintiff, and F. A. Leonard, Esq., appearing as counsel for defendant; and the trial having been proceeded with on said 16th day of July, 1912, and oral and documentary evidence having been introduced on behalf of the respective parties, and the evidence having been closed, and the cause, on said 16th day of July, 1912, submitted to the Court for its consideration and decision, and after due deliberation thereon, the Court having delivered its Findings and Decision in writing, which is filed, and ordered that Judgment be entered in accordance therewith;

NOW, THEREFORE, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court, that N. W. Stowell, plaintiff herein, have

and recover of and from the Rialto Irrigation District, the defendant herein, the sum of Fifty Thousand Five Hundred Seventy-seven and 70/100 (\$50,577.70) Dollars, together with his, said plaintiff's costs in this behalf taxed at \$

Judgment entered October 6th, A. D., 1913.

WM. M. VAN DYKE,

Clerk.

By C. E. Scott,

Deputy Clerk. [51]

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that on July 16th, 1912, the above-entitled cause came on for trial before the above court without a jury, a trial by jury being waived, Honorable Olin Wellborn presiding. The plaintiff appeared by Harris and Swanwick and Burt Chellis, his counsel, and the defendant by Henry Goodcell and F. A. Leonard, its counsel and the following proceedings were had:

[Stipulation as to Certain Facts.]

It was stipulated between the parties that at the time of the execution of the bonds sued upon in this action, A. B. Fowler was the President of the Board of Directors of the Rialto Irrigation District and signed said bonds as such president, and D. Robinson was the Secretary of said Board and signed said bonds and coupons as such secretary.

That the first delivery of bonds made by said District was made to the Semi-Tropic Land and Water Company, in December, 1890, being a delivery of three hundred bonds, and being bonds numbered one to three hundred inclusive; that the next delivery of bonds made by said District was made in May, 1892, or shortly thereafter, under the contract of date, May —, 1892, hereinafter set forth; that said District [52*—1†] paid as they matured nearly all interest coupons maturing during the first four years after the date of said bonds;

That on or about the time, said District failed to have sufficient funds to pay said interest coupons as they became due, said District passed a resolution that it would pay interest on all overdue interest coupons from the time they became due until paid by said District; that the consideration that said District received for the bonds issued and which the bonds mentioned in this suit are a portion, was six hundred and fifty inches of water, pipe-lines,

*Page-number appearing at foot of page of original certified Record.

†Original page-number appearing at foot of page of Bill of Exceptions as Same appears in Certified Transcript of Record.

rights of way and other property and easements used in connection therewith, and that to-day, said property is of the value of not less than \$——; that on or about the first day of January, 1895, said District failed to have sufficient funds with which to pay said interest and installment coupons referred to in the complaint herein as they became due and that at no time since said date, has said District been in possession of sufficient funds with which to pay the same, or any part thereof, and no legal proceedings have been started by plaintiff or any other persons to compel or require said defendant to collect any funds for the purpose.

Testimony of N. W. Stowell, for Plaintiff.

N. W. STOWELL, a witness produced on behalf of the plaintiff, having been duly sworn, testified as follows:

I am the plaintiff in one of the three cases now on trial. At the time the action was brought, I resided at El Paso, Texas. These bonds which I now produce are the same ones sued upon in this action. Subsequent to the issuance of the bonds and coupons sued upon in this action and prior to the commencement of said suit, I acquired the same for value in [53—2] good faith in the ordinary course of business before the apparent maturity of said bonds and coupons and without knowledge of their actual dishonor or any defense thereto. I am acquainted with the property owned by the District. I value the water rights at \$925,000.00 for six hundred and fifty inches of water and the pipe-lines and pipe system at \$175,000.00. At one time, there was an as-

(Testimony of N. W. Stowell.)

signment of the contract from the Semi-Tropic Land and Water Company to me, of their contract with the District. The Semi-Tropic Land and Water Company's land and water rights were mortgaged and the company went into the hands of a receiver. It appeared that it had no funds to go on with the contract. It had conveyed to the District water which the District could not use on account of not having pipe-lines constructed. The District was very anxious to use the water. It was necessarily a failure for the people in the District if the water was not conveyed to them. Under those circumstances, to save my own neck and to save theirs, I had to carry out the Semi-Tropic Company's contract and connect the water with the lands so as to irrigate the lands. They had at that time some two hundred inches of water at the Ferguson Ranch, which it was impossible for them to use and under this contract, I piped that water from the Ferguson Ranch to another tract of water-bearing lands, which they had. By laying some six thousand or seven thousand feet of pipe, the water was conveyed from the Ferguson Ranch to what is known as the Lord Ranch; then by pressure pipe, it was delivered by water-wheel which with two hundred inches of water from the Ferguson Ranch, would raise practically two hundred more inches of water. That was then available through ditches to convey to the lands of the District through pipe-lines. The District [54—3] comprises some seventy-five hundred acres. The Superior Court in

(Testimony of N. W. Stowell.)

San Bernardino County, upon a petition from the receiver of the Semi-Tropic Company made an order, permitting the assignment of the contract to me and confirming such assignment.

Cross-examination.

The assignment referred to was accepted by me voluntarily, the order of Court which was obtained, confirming it. The values that I have placed upon the land and the water is my estimate of the present value. At the time the bonds were originally issued, there was delivered six hundred and fifty inches of running water. Afterward, the water stopped running entirely and had to be obtained by pumping. When I bid for the work for putting in the pipe-line system, the price was based on the bonds at ninety cents, or a cash consideration. Under the amended contract, the figures were raised so as to make the bonds par.

Mr. Hooper held the bonds for the district; I don't know in what capacity, but whatever bonds I got from him were delivered to me upon an order for the bonds. Some of the bonds were, I think, from the officers of the District. I took the orders to Mr. Hooper and he delivered the bonds to me. I received on July 3d, 1892, on an order from the Semi-Tropic Land and Water Company to Mr. Gardner, thirty-eight bonds, being numbered 951 to 988 inclusive. I received on August 3d, 1892, twenty-four bonds, being bonds numbered 926 to 949 inclusive. That is all that I received from Mr. Gardner. I received from Mr. Hooper \$24,000 in bonds and

(Testimony of N. W. Stowell.)

some that came under the old contract of the Stowell Cement Pipe Company, which I received from the Stowell Cement Pipe Company. I don't know what those were. I think those were received October 10th, 1894. I have no doubt [55—4] but what I received the bonds shown upon the various orders to which my receipt is attached. Defendant then offered the receipts in evidence, signed by N. W. Stowell, receipting for the following bonds, upon the following dates, to wit:

February 5th, 1895, for bonds from 426 to 451, both inclusive;

March 2d, 1895, for bonds from 452 to 460, both inclusive;

April 6th, 1895, for bonds from 461 to 464, both inclusive;

March 2d, 1897, for bonds from 465 to 473, both inclusive.

The following bonds were delivered to me by the Semi-Tropic Company, under my contract with it of date November 7th, 1890, upon the following dates, to wit:

January, 1891, bonds numbered 135 to 154; 205 to 234;

January 16th, 1891, bonds numbered 235 to 250;

September 16th, 1891; bonds numbered 251 to 260;

July 3d, 1892, bonds numbered 951 to 988;

August 31st, 1892, bonds numbered 939 to 949.

The following bonds were delivered to the Stowell Cement Pipe Company by the Semi-Tropic Company under its contract with the Pipe Company, of

(Testimony of N. W. Stowell.)

date June 4th, 1892, upon the following dates, to wit:

November 2d, 1892, bonds numbered 751 to 755; 901 to 906;

March 27th, 1893, bonds numbered 626 to 662;

July 1st, 1893, bonds numbered 401 to 410;

October 10th, 1894, bonds numbered 305 to 321; 325 to 350; 421 to 425; 476 to 492;

Bonds numbered 665 to 670, 907. [56—5]

The following bonds were delivered to me by the Rialto Irrigation District under my contract with it of date January 2d, 1895, for the construction of pipe-lines for it, upon the following dates:

February 5th, 1895, bonds numbered 426 to 451;

March 2d, 1895, bonds numbered 452 to 460;

April 6th, 1895, bonds numbered 461 to 464;

March 2d, 1897, bonds numbered 465 to 473.

The first bonds which I received came through the Semi-Tropic Company or from Mr. Gardner—were numbered less than 300. All bonds delivered before 1892 were numbered less than 300, and all delivered after that date were of a higher number. All of the bonds issued to the “Stowell Cement Pipe Company,” I purchased from it. I own forty per cent of the stock of that company.

Redirect Examination.

There are about seventy-eight hundred acres in the District, and when this pipe-line was first constructed, the land was desert land and was hardly worth fifteen dollars an acre. There is now over three thousand acres which is worth easily \$1,000 an acre, and the balance of the District is worth

\$200 to \$250 an acre, making an aggregate value of over \$4,000,000 in the District. [57—6]

[Stipulation as to Certain Evidence, etc.]

It was also stipulated that certain instruments offered and received in evidence in the trial of the case of Stowell vs. Rialto Irrigation District, in the Superior Court of San Bernardino County, as printed in the transcript on appeal to the Supreme Court of California and certain other instruments be deemed as offered and admitted in evidence, upon the trial of this action, including the testimony of certain witnesses, as shown in said transcript. Such instruments and testimony were thereupon offered in evidence and copies thereof are hereafter set forth and made a part of this Bill of Exceptions.

Plaintiff also offered in evidence all of the bonds and coupons mentioned and referred to in his amended complaint and supplemental complaint, which was received in evidence, said bonds and coupons being in the form set forth in said amended complaint and supplemental complaint and maturing as therein set forth. The coupons originally attached to said bonds had all been detached therefrom except the coupons sued upon in said action.

Plaintiff rests.

[Testimony of Witnesses for Defendant Taken from Transcript of Evidence in Stowell vs. Rialto Irrigation District in Superior Court of San Bernardino County, Pursuant to Stipulation.]

Pursuant to said stipulation, the following testimony was admitted from said transcript on behalf of defendant;

[Testimony of J. W. Craig, for Defendant.]

J. W. CRAIG, being called by defendant, testified as follows:

I was connected with the corporation known as the Semi-Tropic Land and Water Company, as a director at the time of the organization of the Rialto Irrigation District. The form of bonds was practically decided upon before the District election for the issuance of said bonds. I remember the making [58—11] of the conveyance by the Semi-Tropic Company to the District of the three hundred inches of water. The Semi-Tropic Company, received \$150,000 of the bonds for that deed, and the bonds were received by the company at the time the deed was delivered to the company.

The deed was offered in evidence and bears date December 22d, 1890; was acknowledged December 22d, 1890, and recorded at request of A. B. Fowler December 29th, 1890, in the Recorder's Office of San Bernardino County.

[Testimony of D. Robinson, for Defendant.]

D. ROBINSON, being called by defendant, testified as follows:

I was secretary of the District at the time of its organization and continued such until February, 1894. I remember the fact of the preparation and signing of the bonds of the District. To the best of my knowledge, they were signed December 21st, 1890. The deed for the three hundred inches of water was received by the District in exchange for the bonds. None of the bonds were ever adver-

(Testimony of J. E. Mack.)

tised for sale and none were ever sold while I was secretary.

[Testimony of J. E. Mack, for Defendant.]

J. E. MACK, being called by defendant, testified as follows:

I have resided for thirteen years in the District, and for a time was secretary of the Board and had a general knowledge of the affairs of the District from about 1893 down to the present time. About 1895, the Semi-Tropic Company went under and we made a supplemental contract with Stowell for the construction of the pipe-line, and after that the bonds were issued to Stowell direct. The bonds of the District were delivered to Mr. Stowell by order from the District to [59—12] Mr. W. S. Hooper. The bonds delivered to him under his contract were as follows:

On February 23d, 1895, bonds numbered	
426 to 451, amounting to.....	\$13,000.00
On March 19th, 1895, bonds numbered 452	
to 460, amounting to.....	4,500.00
On June 4th, 1895, bonds numbered 461 to	
464, amounting to.....	2,000.00
On April 10th, 1897, bonds numbered 465	
to 473, amounting to.....	4,500.00

Total amount, \$24,000.00

[Testimony of W. S. Hooper, for Defendant.]

W. S. HOOPER, being called for defendant, testified as follows:

I am the Cashier of the San Bernardino National

(Testimony of W. S. Hooper.)

Bank and have been custodian of the 314 bonds of the District since June 15th, 1893. I have given out on orders, 136, and still have 178 on hand. These orders were issued by the Board certified to by the secretary and president.

[Testimony of N. W. Stowell, for Defendant.]

N. W. STOWELL, being called on behalf of defendant, testified as follows:

I remember in a general way the fact of the formation of the Rialto Irrigation District. Previous to that time I had been furnishing and laying pipe-line for the Semi-Tropic Land and Water Company.

Q. And after the formation of that district, did you make any arrangement or agreement with the company for continuing or constructing pipe-lines for the use of the district?

A. No, I had no other agreement.

Q. You constructed the pipe-lines that were constructed in the district, did you not?

A. Yes, sir. [60—13]

Q. And constructed them in part for the Semi-Tropic Company? A. Yes, sir.

Q. When was that arrangement made with the Semi-Tropic Company?

A. I think it was about 1886, the first contract; and then there was another one about 1888; and another one along in the fall of 1890.

Q. With reference to the work that was to be done for the district, about what time did you arrange with the company to do that work?

A. I think it was in the fall of 1890.

(Testimony of N. W. Stowell.)

Q. And that was to cover the lands where the district is?

A. I think the district was not formed at that time.

Q. You had the arrangement with the company before the district was formed?

A. That is my impression.

Q. What was your agreement with the company as to how you should be paid for that work?

A. It was cash, or optional to take some bonds at ninety cents, if I could sell the bonds—bonds of the irrigation district.

Q. At that time you knew in a general way, did you, that the company had some arrangement with the district by which it was to furnish water and pipe-lines for the district?

A. They said they were going to have the bonds; I knew nothing about what arrangements they had.

Q. Though you may not have known its terms, you understood that there was a contract of some kind between the company and the district?

A. Not at the time I made the contract.

Q. You did later, did you?

A. I knew afterward that they got these bonds for that Lord ranch or something that they sold up there—water.

Q. And you knew or understood in a general way that the company was to furnish water and also pipe-lines [61—14] for the district?

A. I knew they were going to pipe it.

Q. And that the company was to be paid for that

(Testimony of N. W. Stowell.)

in bonds of the district?

A. I didn't know anything about that; I didn't know how they got their pay. When I made the contract, they said they would have bonds enough to do the whole work, and would advance me the whole lot to do all the work at once, as soon as they got the bonds printed; and I took the contract on that understanding, and elected to take bonds instead of cash, because I sold the bonds before they were delivered for more than I took them for.

Q. You understood that the company was obtaining bonds from the district? A. Why, certainly.

Q. And that the company was under contract with the district in some way, to do the work for the district that you were doing for the company?

A. Well, I didn't contract to do particularly the district; it was a certain tract of land I was to cover, which included the district and lands north of the district. I didn't know where the district lines were.

Q. While you did not know the district lines, you did understand that the pipes that you were to lay included pipes for the district?

A. Yes, I knew it covered the district, whatever it was. They claimed to have bonds enough to pay me in advance for the doing of the whole work, and agreed to advance me the whole amount which I sold them if I did do, and as soon as they were printed I was to have enough to cover the whole amount of the work.

Q. In laying the pipe-lines in the district, in so

(Testimony of N. W. Stowell.)

far as they were in the district, you were doing that for the company? A. Yes.

Q. And you understood in a general way that the company had some arrangement with the district by which [62—15] they were to do it for the district?

A. I knew they were going to do it; that is all I knew about it. I knew the company was going to do that work, because they contracted with me to do it. Some of it was in the Rialto district, and some in another district over there, and some was under the old settler's district. I didn't know one from the other.

Q. You understood that the company was to receive bonds from the district?

A. They were to pay me in bonds for doing it for the other two districts, as well as the Rialto district.

Q. You understood that the company was to receive bonds from the district on account of work which you did for the company?

A. They claimed they had the bonds, and were agreeing to advance them to me as soon as they were printed, and I waited till away in January. They didn't get them printed till January, ready for delivery, and so I didn't get them in advance the way they promised them to me.

Q. You understood that the company was to furnish water to the district?

A. I understood they had furnished water to the district; that is where they got the money *or* the bonds.

(Testimony of N. W. Stowell.)

Q. And that they were to see that water was piped for the use of the district?

A. Well, it was already piped down at the time, as far as the district.

Q. The pipes that you were to construct were not already constructed? A. No.

Q. You mean the water was piped down to the district? A. No.

Q. And not the distributing pipes?

A. Not all of them, some of them were in.

Q. I will call your attention to a paper that is pasted in the book that has been referred to here as the minute-book of the district, on page 53, a type-written paper, [63—16] dated "Los Angeles, Cal., November 16th, 1891," addressed to the directors of the Rialto Irrigation District, and purporting to be signed "Geo. H. Bonebrake, N. W. Stowell, Lowell L. Rogers," and ask you whether that is your signature to that paper?

A. Yes, sir; that is my signature; it is a petition to purchase the Ferguson place, as I understand.

Mr. GOODCELL.—I offer the paper in evidence. Said document is as follows: (As copied from said document pasted on page 53 of said minute-book.)

"Los Angeles, Cal., November 16th, 1891.

To the Directors of the Rialto Irrigation District.

Gentlemen:—The following facts are presented for your consideration, and based on them, a request is made, a compliance with which is considered just and advantageous to all parties.

First: Your bonds taken by the Semi-Tropic

(Testimony of N. W. Stowell.)

Land and Water Company and ultimately by others have proven to be for the present of less aid in carrying on immediate improvements than was expected, that is, they assist only as collateral and at only about one-third their value.

Second: This necessitates a use of a larger amount of the bonds than it was at first expected to push forward the work of sinking wells and laying pipe-lines.

Third: The parties who have invested their money in the enterprise of watering your district have thus far spent over \$250,000 over \$50,000 recently, and have as returns only got \$150,000 in your bonds, and these they can realize on only about one-third, or \$50,000.

Fourth: The pressure for still further extending the system is heavy, and the whole ought to be furnished at an early date, in order to meet the wants of improvements [64—17] and settlements.

It is further requested that you allow the issuance of \$50,000 more of the bonds of the Semi-Tropic Company under its contract with you, provided it turns over to the district by proper indentures the wells and pipe-lines completed and connected since the first transfer, and that deeds to the water on the Ferguson place and some fifty acres of the best artesian lands thereby placed in escrow as security that the full four hundred inches purchased will be delivered and the needed pipe-lines laid at an early date.

This it is believed will make the district fully

(Testimony of N. W. Stowell.)

secure and enable all parties to move forward with safety and dispatch.

Respectfully yours,

GEO. H. BONEBRAKE,
N. W. STOWELL,
LOWELL L. ROGERS."

I first learned of the contract referred to in this paper about 1895 or 1896. It might have been 1897; I don't know.

Well, I didn't know anything about what the contents of it was; I didn't even know what the Ferguson place was; I knew nothing about it; Governor Merrill brought it to me to sign it, and I told him I didn't know anything about it. Well, he said he was getting signatures, so I signed it to accommodate him; I didn't know anything about what it was or what it was about.

I didn't know the terms of the contract until about 1897. I first received Rialto Irrigation District bonds from the Semi-Tropic Company about January 10, 1891. I think there was about \$20,000 worth, par value. [65—18]

I received other bonds along after that, as I put the pipe in. I think the coupons sued on in this case are coupons that were cut from bonds that I received from the Semi-Tropic Land and Water Company. There may have been one or two that didn't come that way, but I think they all came from that company under those contracts.

I have a memorandum by which I can fix about the date when I first saw the contract, or became ac-

(Testimony of N. W. Stowell.)

quainted with the terms of the contract, between the company and the district. I have a copy that I sent to Mr. Robinson for, and in which he made and sent to me, a certified copy. It has a notary's certificate at the time it was copied, of date August 18, 1897, and my stamp on it, the date that I received it. That is about the date that I first saw the document.

Q. But you knew long before that that there was some kind of a contract between the company and the district?

A. Yes sir; for a year or two before that I knew there was a contract.

Q. At the time that you commenced the work of constructing the pipe-lines of the district you understood that there was some kind of a contract of the company with the district?

A. No, I didn't know anything about that. They claimed to have bonds enough to finish all the work, at the time that I took the work.

Q. But I understand you to say that at that time the bonds had not even been printed?

A. They had not been printed; they were entitled to them as soon as they were printed, and agreed to hand them to me I think some time in November.

Q. So that at the time that arrangement was made, you do not mean to say that they had actually received the bonds?

A. No, they had not been printed; but they were to be printed, and I was to get them some time in November, as I [66—19] understand it.

(Testimony of N. W. Stowell.)

Q. Then, you understood that the company had some agreement or arrangement with the district by which it was to get those bonds when they were printed?

A. Yes, sir, they were going to deed all that water system, and they were going to get bonds enough to do all the work; until they were printed they couldn't get them. Now, that is the long and short of it. And I sold the bonds.

The COURT.—You knew at that time that they were going to get bonds for doing the work there?

A. I knew they were going to get the bonds; I didn't know what they were going to get them for, except—

Q. What time was it you had that understanding, that was before you got the bonds, wasn't it?

A. I made the arrangement before that.

Q. Before you got the bonds, you knew what the Semi-Tropic Company were going to give in return for the bonds?

A. They were going to give the Rogers water system up there.

Q. And that other item you mentioned there of "work." You knew at that time that was a part of the consideration for the bonds?

A. I didn't know anything; only they said they would have bonds enough, as soon as they were printed, to pay me for doing all the work of the district.

Q. What work were they going to do?

A. They were going to pipe the Old Settler's

(Testimony of N. W. Stowell.)

tract, the Rialto District and the Citrus Belt District—three tracts of land.

Q. That is, the Semi-Tropic People were going to do that?

A. Yes, sir; they were selling land all over the country there; they had 30,000 acres.

Q. For that, or part of that work, they were going to get bonds of the Rialto Irrigation District—is that what [67—20] you mean?

A. I meant what I said.

Q. Well, did you mean that?

A. As soon as the bonds were printed they would have bonds enough to pay for all the work, and they were going to advance the whole amount of the work to begin with.

Q. Did you mean that? That the Semi-Tropic Company were to get the bonds in return for the work you mentioned there?

A. Oh, no; they were going to get the bonds for the pipe system delivered to them, and they would have bonds enough to pay me for doing all the work.

Q. You were going to do the work for them?

A. Yes, sir; for the Semi-Tropic Land and Water Company, and they were to pay me for it. I had been doing work for them right along. They had made some very extensive plans there, that took over \$100,000 of work contemplated.

Q. I understood you to say you had the bonds sold?

A. I had the bonds sold for 92½ cents, and the

(Testimony of N. W. Stowell.)

company failed to put up that agreed to take the bonds; so I have the bonds yet, some of them—I did have until a short time ago. I have got some of the coupons.

Q. When you wrote that letter with Mr. Bonebrake and Mr. Rogers to the company, do you mean to say that you had no acquaintanceship at all with the contract?

A. I had no acquaintanceship that there was a contract in existence; I signed it like any other petition that was put up to me, without ever knowing what it was for, or caring anything about it.

Q. That petition, as you call it, provided for the expenditure by you and Mr. Bonebrake of some more money, providing for the furnishing of these people some more water, in order that their plans might turn out better?

A. I don't know; I didn't understand what it was for. [68—21]

Q. You signed that petition without understanding what it meant?

A. Yes, sir; I knew nothing about what it was for; they came and asked me as a favor to sign it.

Q. Having taken \$150,000 worth of bonds, or \$250,000 whichever it was, and agreeing to do a large amount in addition, you mean to say you did not know what you were doing?

A. I had not at that time taken over—they had paid me probably thirty or forty thousand dollars in cash, and possibly I had twenty or thirty thousand dollars in bonds at that time; and they came

(Testimony of N. W. Stowell.)

and brought me a petition that they said would help out, and I should probably sign it as long as it didn't call for any expenditure on my part. I didn't call for any expenditure on my part. I didn't even know about the contract; I didn't even know where the Ferguson ranch was at that time.

Q. What reason was there for such action on your part?

A. Simply to accommodate Governor Merrill, that is all.

Q. How was Governor Merrill to be accommodated in that contract?

A. Well, he wanted it, and so I signed it.

Q. He does not appear in it; he is not mentioned in it; how was he to be benefited?

A. I don't think he was quite in touch with the people in that community, at that time, and consequently he did not sign it himself; he got Major Bonebrake, who was not known around that country—favorably known if known at all—to sign it; that is the way it looks to me now; I didn't know anything about it at the time.

Q. What was done with that petition?

A. I don't know; I never saw it till to-day.

Q. Nothing done by you under it?

A. No, sir. [69—22]

[Documentary Evidence Offered in Stowell vs. Rialto Irrigation District in Superior Court of San Bernardino County and Incorporated Herein Pursuant to Stipulation.]

The instruments above referred to as offered in evidence under said stipulation, are (omitting description) as follows:

[Exhibit — Contract Dated December 10, 1890, Between Semi-Tropic Land and Water Company and Rialto Irrigation District.]

1. Contract of date December 10th, 1890, between Semi-Tropic Land and Water Company with Rialto Irrigation District, duly acknowledged and thereafter recorded on December 28th, 1891.

“This agreement, made and entered into this tenth day of December, 1890, by and between the Semi-Tropic Land and Water Company, a private corporation of the County of San Bernardino, State of California, the party of the first part, and the Rialto Irrigation District, a public corporation, of the same county and state, the party of the second part, each of said corporations being hereunto duly authorized by resolutions of the board of directors of said corporations, respectively:

Witnesseth: That the said party of the first part, for and in consideration of the covenants and agreements on the part of said party of the second part, hereinafter contained, hereby promises and agrees to sell and convey unto the said party of the second part, by a good and sufficient deed in the form of grant, bargain and sale, free from incumbrance,

except as hereinafter provided, a continuous and perpetually flowing stream of water equal to one thousand (1,000) inches of water, measured under a four-inch pressure, flowing and derived from that certain tract of land, situated in the County of San Bernardino, State of California, and more particularly described as follows, to wit: (Here follows description.)

Party of the first part promises and agrees that said stream of water shall be gravity supply derived from artesian wells located upon the above-described tract of land, [70—23] or upon lands adjacent thereto, and that it shall be continuous stream flowing naturally and uninterruptedly;

Party of the first part promises and agrees that the pipe and pipe lines through which said water is to be conveyed and delivered to the said party of the second part, as therein provided, shall be, and consist of No. 14 double dipped and well riveted steel pipe, where the pressure will be 15 feet or more, and where the pressure will be from 8 to 15 feet, vitrified burned clay pipe, and where the pressure will be 8 feet or less well made cement pipe, mixed in proportions of at least 1 part of cement to 4 parts of sand and gravel, and that said pipe and pipe lines shall be laid and constructed in a good and workmanlike manner and so that the top thereof shall nowhere be less than eighteen inches below the surface of the ground; provided always, however, that said pipe and pipe lines shall at every point have sufficient strength to withstand the pressure required to carry the water therefrom to a height of

at least four feet above the highest point in the territory adjacent thereto and to be irrigated therefrom.

Party of the first part further promises and agrees that said pipe and pipe lines shall be laid along each avenue running north and south through the Rialto Irrigation District, as said avenues are delineated on the maps of the Semi-Tropic Land and Water Company's lands, or on and along the highest ridges between any two of said avenues, and also along the eastern and western boundary lines of said district, except along the township line between ranges 4 and 5, west San Bernardino base and meridian, and that each of said pipes and pipe lines shall at every point have a conveying capacity of at least seventy-five (75) inches. [71—24]

Party of the first part further agrees that said pipe lines shall be furnished with all necessary valves, water boxes, gates and turnouts, so located as to enable each and every farm lot in said Rialto Irrigation District, as said farm lots are delineated on the maps of the Semi-Tropic Land and Water Company's lands or other recognized survey or plat to be irrigated in the easiest manner possible from said water system and pipe line, as shall be determined by the directors of said district, each in his own division, respectively.

Party of the first part further promises and agrees to lay and construct said pipe-lines as soon and as fast as the same are required for the actual settlement or improvement of the lands within said Rialto Irrigation District, and that each and all of said

pipe lines and said pipe system shall be completed within two years from and after the date of this agreement.

Party of the first part further promises and agrees to have its main pipe laid and constructed from said source of water supply to the intersection of Acacia avenue with the north boundary line of said irrigation district, and to deliver to said party of the second part through said main pipe, and at said point of intersection, on or before the 15th day of December, 1890, a continuous, perpetually flowing stream of water equal to three hundred inches of water, measured as aforesaid.

And the party of the first part further promises and agrees that it will, as soon as said main pipes are laid and constructed, and said three hundred inches of water delivered, as aforesaid, to wit; on or before the 15th day of December, 1890, execute and deliver unto the said party of the second part, a good and sufficient deed of grant, bargain [72—25] and sale, conveying to said party of the second part, free from incumbrances, except as hereinbefore provided, said perpetually flowing stream of water equal to three hundred inches, measured and delivered as aforesaid, together with said main pipe line and the right of way and privileges belonging therewith or appertaining thereto, and also a perpetual right in and upon the tract of land constituting the source of supply of said water; together with the right to enter upon said tract of land, and to take such reasonable and proper measures thereon, as may be necessary to maintain the said stream of three hundred

inches of water, measured as aforesaid, up to the said amount, said water right and right of entry to be and remain a perpetual servitude in fee-simple upon said tract of land constituting the source of supply, as aforesaid, to the extent of the right so granted.

Party of the first part further promises and agrees to pursue with reasonable diligence the work of developing water by artesian wells, upon the above-described tract of land, or lands adjacent thereto, and of constructing said pipe lines and pipe system, as aforesaid, and to deliver said water to the said party of the second part as soon and as fast as may be required for the actual settlement and improvement of the lands within said Rialto Irrigation District.

Party of the first part further promises and agrees to have all of said pipe lines fully completed, and to develop and deliver as herein provided, said entire stream of water, derived and measured as aforesaid, in compliance with each and all of the terms of this agreement, on or before two years from and after the date of this agreement.

Party of the first part further promises and agrees that upon the subsequent delivery of each and every respective, continuous, perpetually flowing stream of water equal to one [73—26] hundred inches of water, measured as aforesaid, over and above the said stream of three hundred inches of water, measured as aforesaid, and up to and including the total amount of nine hundred inches of water of the full amount herein agreed to be conveyed, the said party

of the first part will execute and deliver unto the said party of the second part, a good and sufficient deed of grant, bargain and sale, conveying to the said party of the second part, free from incumbrances, except as hereinbefore provided, each said continuous, perpetually flowing stream of water equal to one hundred inches of said water, measured and delivered as aforesaid respectively, together with any and all pipe lines and pipe then laid and constructed, as herein provided, and the right of way and privileges belonging therewith, or appertaining thereto, and also a perpetual right in and upon the tract of land constituting the source of supply of each said stream of water, equal to one hundred inches of water, measured as aforesaid respectively, conveyed as aforesaid, together with the right of entry upon said tract of land, and to take such reasonable and proper measures thereon as may be necessary to maintain each respective stream of one hundred inches of water, measured and conveyed as aforesaid, up to the said amount of one hundred inches, over and above all previous conveyances of water derived from the same source, said water right and right of entry to be and remain a perpetual servitude in fee-simple upon said tract of land constituting the source of supply of said water so conveyed by each of said respective deeds, to the extent of the rights so and therein granted respectively.

Party of the first part further promises and agrees that upon the completion and acceptance of each and all of the said pipe lines, and of the whole

pipe system herein provided for, and the delivery, as herein provided, of the [74—27] whole, continuous, perpetually flowing stream of water equal to 1000 inches of water, measured and derived as aforesaid, the party of the first part will execute and deliver unto the said party of the second part, a good and sufficient deed of grant, bargain and sale, conveying unto the said party of the second part, free from incumbrance, except as hereinbefore provided, an estate in fee-simple in, of and to all and singular the source and sources of supply of said water, or any part thereof, all water up to the said amount of 1000 inches, not previously conveyed, and all pipe, pipe lines, rights of way and privileges belonging therewith or appertaining thereof, as hereinbefore provided.

For and in consideration of the covenants and agreements on the part of the party of the first part, hereinbefore contained, the party of the second part promises and agrees to buy and take, as hereinbefore provided, the said continuous, perpetually flowing stream of water equal to 1000 inches of water measured under a four-inch pressure, flowing and derived from the tract of land hereinbefore described, or from lands adjacent thereto, together with the lands from which said water is derived, and the pipe and pipe lines, rights of way and privileges used to convey and deliver said water, as hereinbefore provided, and to deliver to the said party of the first part therefor, bonds of the Rialto Irrigation District, the said party of the second part, to the amount of five hundred thousand dollars

(\$500,000.00), at par value, said bonds to be delivered as follows, to wit:

One hundred and fifty thousand dollars (\$150,000.00) of said bonds, at par value, to be delivered upon the construction and completion of the main pipe line hereinbefore provided for, to the intersection of Acacia avenue with the [75—28] north boundary line of said Rialto Irrigation District, and the delivery at said intersection of said continuous, perpetually flowing stream of water equal to three hundred inches, measured as aforesaid, and the delivery of the deed thereof, as hereinbefore provided, on or before the 15th day of December, 1890.

Party of the second part further agrees that it will deliver to the party of the first part fifty thousand dollars (\$50,000.00) of said bonds, at par value, additional, upon the delivery of each subsequent, perpetually flowing stream of water equal to one hundred inches, measured as aforesaid, respectively, and the delivery of the deed thereof, as hereinbefore provided, up to and including nine hundred inches of water, measured as aforesaid.

Subject, however, to the proviso that the last fifty thousand dollars (\$50,000.00) of said bonds, at par value, shall be retained until sixty days subsequent to the completion and acceptance of all of the pipe lines, and of the whole pipe system hereinbefore provided for, and the delivery, as herein provided, of the whole, continuous, perpetually flowing stream of water equal to 1,000 inches of water, measured and derived as aforesaid, and the delivery of the last deed, hereinbefore provided for, when the said fifty

thousand dollars (\$50,000.00) of said bonds, at par value, shall be delivered.

It is expressly agreed by and between the parties hereto, that all questions arising between them as to the sufficiency of said pipe lines, or any of them, or the measurement of any or all of said water shall be submitted to a board of arbitration, consisting of three competent engineers skilled in the determination of such matters, one of said engineers to be named by the party of the first [76—29] part, another by the party of the second part, and the third by the two engineers so chosen, the determinations of said board to be final and conclusive.

It is also expressly understood and agreed by and between the parties hereto, that so far as is practicable and consistent with the best interests of the said party of the first part, all work in or about the development of said water, and laying and construction of said pipe line, shall be given to persons residing within said Rialto Irrigation District, at regular wages.

It is expressly understood that the said party of the first part shall and will purchase and include in the 1000 inches of water, hereinbefore provided, to be conveyed to the said party of the second part, all private water and water rights owned or held within said irrigation district, and derived from the same or similar sources.

It is expressly understood and agreed that the deed to the first three hundred inches of water, hereinbefore provided for, to be delivered on or before the 15th day of December, 1890, shall be accom-

panied by good and sufficient releases executed by the South Rialto Land and Water Company and corporation, and L. L. Rogers, releasing any and all claims, rights and interests of either or both of them to or upon the said water and source of supply.

It is expressly understood and agreed that the said party of the first part is, at the time of delivery of each deed hereinbefore provided for, to furnish a good and sufficient abstract of title showing the property in each such deed described and conveyed to be free from incumbrance except as hereinbefore provided.

It is understood and agreed that each and all of [77—30] the promises, covenants and stipulations aforesaid, are to apply to and bind the successors and assigns of the respective parties hereto.

In witness whereof, the said parties have caused these presents to be executed, and their respective corporate seals hereunto affixed, the day and year first above written in duplicate.

SEMI-TROPIC LAND & WATER CO.,

[Seal]

By SAM'L MERRILL,

President, and

JOSEPH L. MERRILL,

Secretary.

RIALTO IRRIGATION DISTRICT,

[Seal]

A. B. FOWLER,

President.

DEVILLO ROBINSON,

Secretary."

**[Exhibit—Contract Dated December 22, 1890,
Between Semi-Tropic Land and Water Com-
pany and Rialto Irrigation District.]**

2. Contract of date December 22d, 1890, between Semi-Tropic Land and Water Company, with Rialto Irrigation District, duly acknowledged and thereafter recorded on December 28th, 1891.

“This indenture, made this 22d day of December, 1890, by and between Semi-Tropic Land and Water Company, a private corporation, having its principal place of business at Rialto, San Bernardino county, California, party of the first part, and Rialto Irrigation District, a public corporation of the same county and State, party of the second part, each of which corporations being hereunto duly authorized by resolution of its board of directors; witnesseth:

That that certain agreement bearing date the 10th day of December, 1890, by and between Semi-Tropic Land and Water Company, party of the first part, and Rialto Irrigation District, party of the second part, is hereby further modified by striking therefrom, and annulling the following clause, to wit:

[78—31]

‘It is expressly agreed by and between the parties hereto that all questions arising between them as to the sufficiency of said pipe lines, or any of them or the measurement or all of said water shall be submitted to a board of arbitration, consisting of three competent engineers, skilled in the determination of such matters, one of said engineers to be named by the party of the first part, another by the party

of the second part, and the third by the two engineers so chosen; the determination of said board to be final and conclusive.'

And the parties hereto do further covenant and agree as follows, to wit:—

It is expressly agreed by and between the parties hereto that all questions arising between them as to the sufficiency of said pipe lines, or any of them or the measurement of any or all of said waters, shall be submitted to W. P. Gardiner, and shall be determined by him provided, however, that said Gardiner shall have power, if he so elect, to employ one or more competent engineers, skilled in the determination of such matters, to make proper examinations and render any services and furnish any information said Gardiner may desire, either in determination of the questions to be by him determined, under the provisions hereof, or under the provisions of said agreement of December 10th, 1890, or under any modifications thereof.

And the parties hereto do further covenant and agree as follows, to wit: That upon the execution of this agreement said Semi-Tropic Land and Water Company will forthwith execute and deliver to said Rialto Irrigation District the deed of grant, bargain and sale, mentioned in said agreement of December 10th, conveying to said Rialto Irrigation District [79—32] said perpetually flowing stream of water, equal to three hundred inches, together with the main pipe line and right of way and privileges belonging therewith or appertaining thereto, together with the perpetual right in and upon the tract of

land constituting the source of the said water supply, and to take such reasonable and proper measures thereon as may be necessary to maintain the said stream of three hundred inches of water, and at the same time with the delivery of said deed, to wit, forthwith upon the execution of this agreement, said Rialto Irrigation District shall deliver to said Semi-Tropic Land and Water Company the one hundred and fifty thousand dollars of bonds, at par value, provided in said agreement of December 10th, 1890, to be delivered upon the construction and completion of the main pipe line designated in said agreement, to the intersection of Acacia avenue with the north boundary line of said Rialto Irrigation District, and the delivery at said intersection of said continuous perpetually flowing stream of water, equal to three hundred inches measured as aforesaid, and the delivery of the deed thereof.

And said Rialto Irrigation District doth hereby further covenant and agree that upon the delivery to it of said deed, as last aforesaid, and upon the delivery by it of said one hundred and fifty thousand dollars in bonds, to said Semi-Tropic Land and Water Company, as aforesaid, to wit: immediately upon the execution of this agreement, said Rialto Irrigation District shall forthwith place in escrow in the hands of W. P. Gardiner, all the remaining three hundred and fifty thousand dollars of said five hundred thousand dollars of bonds, mentioned in said agreement of December 10th, 1890, which said three hundred and fifty thousand dollars of bonds shall be held by said Gardiner for delivery [80—33]

to said Semi-Tropic Land and Water Company at the times and upon the conditions and in the amounts provided for in said agreement of December 10th, 1890, and the modifications thereof, hereinbefore referred to, and the modifications thereof hereby made.

And the parties hereto do hereby further covenant and agree that the said Gardiner shall be, and he is hereby given full power upon behalf of the respective corporations, parties hereto, to absolutely determine whether the conditions of said agreement of December 10th, 1890, and the aforesaid modifications thereof, shall have been kept and performed from time to time by said Semi-Tropic Land and Water Company, so as to entitle it to receive the respective installments of said bonds and said W. P. Gardiner shall have full power to decide all questions that may arise under said agreement of December 10th, 1890, or under any of the modifications thereof between the parties hereto. And in case the said Gardiner shall, under the provisions hereof decide that the conditions aforesaid, as to the delivery of any installment of said bonds, have been complied with by said Semi-Tropic Land and Water Company, he shall forthwith deliver the same to said Semi-Tropic Land and Water Company, provided that said Semi-Tropic Land and Water Company shall, at the time of the delivery of any and every installment of said bonds to it, thereupon deliver to said W. P. Gardiner, for said Rialto Irrigation District, the abstract and deed of conveyance provided in said agreement of December 10th, 1890, to be delivered

to said Rialto Irrigation District upon the receipt of the respective installments of bonds at that time delivered, and provided also that said Semi-Tropic Land and Water Company, shall at or before that time, have done and performed on its [81—34] part all the conditions of said agreement of December 10th, 1890, so as to entitle it to have the respective installments of said bonds delivered to it.

The parties hereto do further covenant and agree hereby that before the delivery of any installment of said bonds by said W. P. Gardiner to said Semi-Tropic Land and Water Company he shall cancel on the bonds so to be delivered, all the coupons thereof for the accrued interest on the bonds so to be delivered up to date of the delivery of the bonds, provided, however, that if such delivery be made at intermediate periods between the dates of maturity of the coupons, he shall equalize the amount by cancelling such a number of the coupons earliest maturing as will aggregate in amount the sum equal to the accrued interest upon the bonds being delivered, to the date of delivery.

The parties hereto do hereby further covenant and agree to and with each other, and with said W. P. Gardiner, that the parties of the first part hereto shall pay to said W. P. Gardiner (each party hereto to pay one-half) when demanded from time to time, as services are rendered and as disbursements are required to be made by him, as reasonable compensation for any and all services rendered or to be rendered by him hereunder or in connection with the matters herein designated, either as attorney at law,

trustee, escrow holder, or otherwise, including the reasonable compensation of any engineers that may be employed by said W. P. Gardiner, together with all expenses and disbursements that may be properly incurred or made by said W. P. Gardiner.

Said W. P. Gardiner, as an attorney at law, shall examine each and every abstract of title, and examine each continuation of such abstracts, and shall pass upon the same, and be the sole judge as to whether each and every of such [82—35] abstracts or continuations thereof shall show that the property to be conveyed by the respective deeds, shall be free from incumbrance as provided for in said agreement of December 10th, 1890, and said W. P. Gardiner shall be the sole arbitrator of any and all questions of dispute that may arise between the parties hereto hereunder under said agreement of December 10th, 1890, or under any of the modifications thereof.

Said agreement of December 10th, 1890, modified as aforesaid, is hereby ratified and affirmed, and the same, and all the aforesaid modifications thereof, are hereto attached and as modified are hereby made part of this agreement, and when so attached hereto, a copy of the whole thereof, certified to be such copy, by the respective secretaries of the corporations parties hereto, shall be delivered to said W. P. Gardiner by said secretaries, and such copy shall constitute an authorization to said W. P. Gardiner to do and perform all things herein designated to be done or performed by him.

In witness whereof the respective parties hereto

have by resolutions of their respective boards of directors, caused these presents to be subscribed by their presidents and secretaries, and their respective corporate names and seals to be hereto affixed the 22nd day of December, 1890.

SEMI-TROPIC LAND & WATER CO.,

[Seal]

By SAM'L MERRILL,

President,

And by JOSEPH L. MERRILL,

Secretary.

RIALTO IRRIGATION DISTRICT.

[Seal]

By A. B. FOWLER,

President,

And by D. ROBINSON,

Secretary." [83—36]

[**Exhibit—Contract Dated May 26, 1892, Between
Semi-Tropic Land and Water Company and
Rialto Irrigation District.**]

3. Contract of date May 26th, 1892, between Semi-Tropic Land and Water Company with Rialto Irrigation District, duly acknowledged and thereafter recorded on June 3d, 1892.

“This agreement, Made this day of May, 1892, by and between the Semi-Tropic Land and Water Company, a private corporation, the party of the first part, and the Rialto Irrigation District, a public corporation, of the County of San Bernardino, State of California, the party of the second part, each of said corporations being hereunto duly authorized by resolution of the board of directors of said corporations respectively.

Witnesseth:—That the party of the first part

agrees to sell, transfer, or cause to be transferred and to deliver with deed of grant, bargain and sale to the party of the second part, and the party of the second part agrees to buy and receive at the time, in the manner and upon the terms hereinafter stated, certain water and water rights amounting to six hundred (600) inches of water, measured under a four (4) inch pressure derived from that certain tract of waterbearing lands situated in the County of San Bernardino, State of California, known as the Meeks Mill property (also known as the Raynor place), it being agreed that if it shall be found impossible to develop and procure said entire amount of said six hundred (600) inches of water from said Raynor place, then party of the first part may develop and procure a sufficient amount of water to make up said entire amount of said six hundred inches of water from adjacent lands; such supply of six hundred (600) inches of water measured as aforesaid, shall consist of a continuous and perpetually flowing stream of water, but the term "continuous" and "perpetually flowing" as used in this agreement shall not bind [84—37] the party of the first part to maintain a continuous flow of water after the fulfillment of the terms of this contract as to said six hundred inches of water in other particulars.

The party of the first part agrees to cause to be conveyed to the party of the second part the said water and water rights by the delivery of good and sufficient deeds of grant, bargain and sale, conveying to the party of the second part, the said water and water rights together with any and all pipe

lines, pipe or cement ditches then laid and constructed as provided herein, or as provided in the agreement hereinafter designated as "Exhibit A" and the rights, rights of way in and upon the tract of land constituting the source of said supply of water, viz., the said "Meek Mill property" with the right to take such reasonable and proper measures thereon as may be necessary to perpetually maintain the supply of water to be delivered as hereinbefore stated, said rights to be a perpetual servitude in fee simple in and upon the lands constituting the source of supply.

But it is understood that the party of the first part does not agree that such conveyances so far as the same includes the main pipe and ditch line now existing from the Raynor place to the point of delivery at the bluff or terrace hereinafter mentioned at its intersection with San Bernardino avenue shall pass to the party of the second part the title to said main pipe and ditch line nor the exclusive right to the use of the same; but such conveyance shall give to the party of the second part a proportionate right to the use of such main pipe and ditch line to the extent that may be necessary to convey the said six hundred inches of water.

It is further agreed that at the time of said conveyances to be made by grant, bargain and sale deed to the [85—38] party of the second part by the owners of said water right, the party of the first part shall execute and deliver to the party of the second part, quitclaim deeds to portions of said water and water rights equal to and incidental with

the property at such times respectively conveyed by said grant, bargain and sale deeds.

It is further agreed that the party of the second part accepts this agreement with notice of now outstanding encumbrances in said San Bernardino County against the said Meeks Mill property, such encumbrances existing by way of mortgage; and with notice of existing claims to water rights in said Meeks Mill property, estimated as amounting in the aggregate to one hundred and thirty-six inches of water measured as aforesaid, and that the obligations of the party of the first part under this, its agreement to procure grants of said six hundred inches of water do not imply a covenant to remove or cause to be removed such existing and known encumbrances, nor defeat, nor remove, nor cause to be removed or defeated said claims of prior rights in the water source and supply in and upon said Meeks Mill property except that the title to the water, water rights and servitudes shall be free and unencumbered except as to the prior claims of one hundred and thirty-six inches of water aforesaid.

It is further agreed by the parties hereto that whenever said conveyances of water and water rights shall be made by deeds as aforesaid and as hereinafter particularly provided and when the party of the first part shall have developed and delivered the said supply of six hundred inches of water together with the ditches and pipe lines hereinafter provided for the carrying of said supply of water, that the party of the second part shall accept the said conveyances [86—39] and delivery of water, water

rights, ditches and pipe lines as a full and final performance *pro tanto* of the obligations of the party of the first part under the said agreement designated as "Exhibit A" and under the supplementary agreement designated "Exhibit B," hereinafter mentioned; that is to say:

As a full performance to the extent of six hundred inches of water of the agreement to furnish one thousand (1,000) inches of water, as provided in said agreement, in exhibit "A" and exhibit "B."

It is further agreed that party of the second part shall have credit *pro tanto* upon the amount of bonds contracted in said exhibit "A" to be delivered to party of the first part (viz., five hundred thousand dollars in bonds at par) for all bonds hereby agreed to be delivered when said bonds are actually delivered.

It is further agreed that nothing in this contract shall be construed as a waiver of rights heretofore acquired by either party under said agreement exhibit "A."

The said six hundred inches of water shall be developed and delivered by the party of the first part to the party of the second part as follows:

Two hundred inches of water, measured as aforesaid, on or before sixty (60) days from the date of this agreement;

One hundred additional thereof on or before the 15th day of May, 1893;

Three further installments of one hundred inches each within two years from the date of this agreement provided, however, that none of said install-

ments of water of one hundred inches each shall be required to be furnished or accepted between the 1st day of December, and the 1st day of May, of any year. [87—40]

The deeds of conveyance of said water and water rights hereinbefore specified to be executed and delivered to the party of the second part shall be executed and delivered at the respective times of delivery of said installments of water as last above provided; the party of the first part agrees to furnish and deliver all of said six hundred inches of water in the mains of the party of the second part at the highest possible point (reference being had to the relative elevations of said Meeks Mill property and the lands within the boundary of said district) without cost or expense to said party of the second part except as herein expressly provided; and that the same shall be so furnished and delivered through a good and sufficient pipe line laid in conformity with the requirements of said agreement, exhibit "A," provided, however, that said party of the first part may at its option convey said water from said Meeks Mill property to a point at the intersection of San Bernardino Avenue and the edge of the bluff or terrace so called, through a good and sufficient covered cement ditch; but it is agreed that the wooden ditch now located in the place last mentioned may remain and be used during the remainder of the present irrigating season, but no longer. And it is agreed that in the event that said party of the first part shall elect to use such covered cement ditch from said Meeks Mill property to said point of intersection,

said cement ditch shall be covered in a good and workmanlike manner so as to preserve the water from impurities and that in that event suitable waterways for conveying supplies of storm water over said ditch without injury thereto shall be provided by said party of the first part.

It is further agreed that the pipe line or cement ditch and pipe line through which said stream of water is to be delivered as aforesaid from the said Meeks Mill property to [88—41] the mains of said party of the second part shall have an average fall of not to exceed ten feet to the mile.

The said party of the first part promises and agrees to lay and construct pipes, pipe lines, mains and laterals provided for in said agreement exhibit "A," in the manner and according to the specifications therein contained as fast as the same are required for the actual settlement or improvement of the lands within the said Rialto Irrigation District with all reasonable diligence; provided that the same shall be completed within eighteen months from the date of this agreement.

It is further understood and agreed that in as much as the waters derived from the Meeks Mill property will not be available for the irrigation of the whole of said Rialto Irrigation District, the board of directors of said irrigation district may require from the party of the first part and the party of the first part promises and agrees to deliver any further supply of water from the party of the first part to the party of the second part under the terms of said agreement, exhibit "A," over and above said six

hundred inches herein provided for and over and above any other waters that have been actually delivered prior to this date under the terms of said exhibit "A," or so much thereof as may be necessary at some point where the same may be made available for use on such higher lands through the present pipe line of said district.

Inasmuch as an alleged water right of seventy-two inches of water (known as the "rancheria" right) is included in the aforesaid prior claims of one hundred and thirty-six inches of water, and inasmuch as said water right is not in litigation, it is agreed that in case such alleged water right [89—42] is in whole or in part defeated, the priority thereof shall inure to the benefit of the party of the second part.

It is further understood and agreed upon the consideration of these presents and the matters herein contained and mentioned, the party of the second part agrees to pay for said property agreed to be delivered to it in the manner following, that is to say:

1st: Upon the presentation of full and complete releases upon the part of N. W. Stowell, and quitclaim deed from party of the first part, for all claims upon the pipe lines heretofore constructed to, in or for said Rialto Irrigation District by said Stowell under the terms of a certain contract between said Stowell and the party of the first part herein, in accordance with which contract the pipe lines heretofore laid and constructed to and in said district have been laid and constructed, the party of the second part will deliver to the party of the first part

bonds of the Rialto Irrigation District to the amount of twenty-five thousand dollars (\$25,000) par value, provided, however, that nothing in this paragraph contained shall be construed as a waiver of the right of the party of the second part to have said pipe lines that have been heretofore constructed duly tested and approved as provided in said original agreement, exhibit "A."

2nd: That when the party of the first part shall have delivered to the party of the second part, the said first installment of two hundred inches of water together with the deeds hereinbefore provided for, to be delivered at the time and in the manner aforesaid of the water rights accompanying said delivery of two hundred inches of water, the party of the second part will deliver to the party of the first part the bonds of the said party of the second part in said [90—43] agreement, exhibit "A" mentioned, to the amount of sixty-three thousand six hundred and sixty-two and 50-100 (\$63,662.50) dollars, par value.

3rd: That when the party of the first part shall have delivered to the party of the second part, either of said subsequent installments hereinabove mentioned of one hundred inches of water each, together with the deeds of conveyance hereinabove provided, of the water rights accompanying such installments of water so delivered and agreed to be delivered at the time and in the manner aforesaid, that the party of the second part will deliver to the party of the first part the bonds of the party of the second part, as in said agreement, exhibit "A" mentioned, to the amount of twenty-seven thousand five hundred dol-

lars (\$27,500.00) par value, for each of said installments of 100 inches.

4th: That upon the completion and acceptance of each successive installment of pipes, pipe lines, mains and laterals, in accordance to the terms of said agreement, exhibit "A," amounting to the sum of four thousand dollars (\$4000) in bonds payable to said N. W. Stowell for such installment according to the terms of the contract of said Stowell with the party of the first part herein, for such construction; the price at which said pipe is to be figured in any calculation to be not over the following prices per lineal foot, viz.: For eight inch pipe 25 cents; for ten inch pipe 31 $\frac{1}{3}$ cents; for twelve inch pipe 42 $\frac{2}{9}$ cents; for 16 inch pipe 61 $\frac{1}{9}$ cents; for 22 inch pipe 91 $\frac{1}{9}$ cents; for 24 inch pipe 106 $\frac{2}{3}$ cents; for 26 inch pipe 121 $\frac{1}{9}$ cents; for 30 inch pipe 148 $\frac{8}{9}$. That then and thereupon the party of the second part shall deliver to the party of the first part to the amount of five thousand (5000) dollars in bonds for each such installment [91—44] of pipes, pipe lines, mains and laterals, until the whole of said pipe lines in said original agreement, exhibit "A," mentioned and provided for shall have been completed and paid for as aforesaid.

5th: That upon the completion and acceptance from the said point of delivery at the intersection of the bluff or terrace (so-called) with San Bernardino Avenue to the northern boundary of said Rialto Irrigation District of the main pipe line hereinbefore mentioned and to be laid for the conveyance of said stream of water equal to six hundred inches meas-

ured as aforesaid, that then and thereupon, the party of the second part shall deliver to the party of the first part an amount of bonds of said district at par sufficient to pay a sum equal to one hundred and twenty-five per cent of the cost price of said main pipe line between said points last mentioned at the rate provided for laying such main pipes and pipe lines in said Stowell contract mentioned and at the prices heretofore set out. It being understood that said 25 per cent in excess of one hundred per cent of such cost price is intended to be paid to the party of the first part as compensation for expenses incurred by the party of the first part in the construction of such mains and in excess of the amount so paid to Stowell.

The agreement hereinbefore called exhibit "A" is an agreement in writing bearing date the 10th day of December, 1890, by and between the parties aforesaid which agreement was on the 28th day of December, 1891, duly recorded in the office of the county recorder of said county of San Bernardino, in book 143 of deeds, at page 379 thereof; and the agreement hereinabove called exhibit "B" is an agreement in writing between the parties aforesaid bearing date the 22nd day of [92—45] December, 1890, being supplementary to said exhibit "A," and which exhibit "B" was on the 28th day of December, 1891, duly recorded in the office of the county recorder of said San Bernardino County, in Book 143 of Deeds, at page 269 thereof.

It is hereby expressly understood and agreed that the said agreement exhibit "A" and exhibit "B" are

hereby continued in full force and effect and free from any and all modifications, changes or amendments except in so far as the said agreement exhibit "A" construed together with said supplementary agreement exhibit "B," may be inconsistent with and specifically modified, changed or amended by these presents, and it is further understood and agreed that the time of complete fulfillment of said original agreement exhibit "A" as amended hereby and by said exhibit "B" is extended for the period of two years from December 10th, 1892, with respect to the obligation of the party of the first part to furnish the transfer and delivery of said entire 1000 inches of water and the water rights accompanying the same, as in these said agreements provided, but such extension of two years does not extend the limits of the time hereinbefore established for the completion of said pipe lines and ditches.

And it is further agreed that said extension of two years last above provided for shall become null and void if at the expiration of sixty days from the date hereof the party of the first part shall not have completed or shall not be proceeding with reasonable diligence to complete the work of developing and delivering of the installment of 200 inches of water hereinbefore mentioned.

It is further understood and agreed that within ten days from and after the date hereof, the party of the first part shall place in escrow with W. P. Gardiner of Los Angeles, California, a good and sufficient grant, bargain and sale deed [93—46] to the party of the second part of that certain tract of 300

acres of land known as the Ferguson ranch, located in said San Bernardino County, and being a part of a large body of lands of the party of the first part, more particularly described as follows: (Here follows description.)

The conditions of said escrow shall be as follows, viz.: That said deed may be delivered at any time to any person designated or the terms of the delivery hereinafter stated may be changed by mutual consent and direction of the parties hereto.

2nd. That said deed shall be held by said W. P. Gardiner in escrow as aforesaid until the expiration of two years from December 10th, 1892, unless sooner surrendered by mutual agreement by the parties hereto.

3rd. At the expiration of two years from December 10th, 1892, if the party of the first part shall have delivered to the party of the second part with proper deeds of conveyance as agreed the amount of water equal to 1000 inches measured as aforesaid, as by said agreement hereby amended, said water rights and waters are agreed to be delivered and conveyed; and shall have completed said pipe and cement ditch lines as likewise agreed to be completed within 18 months from the date hereof; then in that event the holder of the escrow shall deliver said grant deed to the party of the first part; and together therewith shall deliver to the party of the first part a quitclaim deed from the Rialto Irrigation District to the party of the first part, of the same premises, which quitclaim deed, the party of the second part agrees to place in escrow, for the purpose above stated, at the time

when said grant deed shall likewise be placed in escrow as aforesaid.

4th: If at the expiration of two years from December 10th, 1892, the party of the first part shall not have done and performed all its obligations then and in that event the [94—47] holder of the escrow shall deliver said deeds so held in escrow to the party of the second part.

In the event that the holder of the escrow, after the expiration of two years from December, 1892, shall deliver said grant deed to the party of the second part as hereinabove provided then, and in that event, such delivery shall take effect as of the date of said deed so delivered and in that event, it is further agreed that the party of the second part shall be entitled to the possession of said 300 acres of land immediately upon such delivery of said grant deed out of the escrow, and the party of the second part shall hold such premises so conveyed absolutely and in fee simple provided, however, that at any time after the two years and within three years from December 10th, 1892, the party of the first part shall be entitled to a reconveyance of said 300 acres so conveyed by tendering to the party of the second part, the amount in lawful money of any damages that may have been sustained by the party of the second part on account of any breach by the party of the first part of the provisions of the agreements secured by said escrow arrangements as hereinbefore recited.

In witness whereof, the said Semi-Tropic Land and Water Company, and the Rialto Irrigation District, the parties hereto, have by resolution of their

respective board of directors authorizing the same, caused this agreement to be executed in duplicate by their respective presidents and secretaries for and on behalf of said parties respectively in their corporate names and under their respective corporate seals the day and year first herein written.

SEMI-TROPIC LAND & WATER CO.,

[Seal]

By SAM'L MERRILL,

President, and

JOSEPH L. MERRILL,

Secretary. [95—48]

RIALTO IRRIGATION DISTRICT,

[Seal]

A. B. FOWLER,

President.

DEVILLO ROBINSON,

Secretary."

[Exhibit—Deed Dated December 22, 1890, from
Semi-Tropic Land and Water Company to
Rialto Irrigation District.]

4. Deed dated December 22d, 1890, from Semi-Tropic Land and Water Company to Rialto Irrigation District, duly acknowledged on December 23d, 1890, and duly recorded on December 29th, 1890, by A. B. Fowler.

Said deed conveys to said District 300 inches of water, together with certain pipe laid and constructed from the source of supply to the north boundary line of the District, and recites that the consideration is \$150,000.00, in bonds of the District and is made in pursuance of and in part performance

of the contract of December 10th, 1890, above set forth.

[Exhibit—Deed Dated January 24, 1893, from P. A. Raynor and Wife to Rialto Irrigation District.]

5. Deed dated January 24th, 1893, from P. A. Raynor and wife to Rialto Irrigation District, duly acknowledged and recorded on January 27th, 1893.

Said deed conveys to said District 55 inches of water and refers to the contract of May 26th, 1892, above set forth, and recites that P. A. Raynor agreed to prosecute certain developments for water, and to convey and deliver such water as developed, to the grantee for a consideration to be paid for by said District, and that in pursuance of said contract and for a consideration paid by said District according to the terms thereof, said deed is executed.

[Exhibit—Deed Dated April 25, 1893, from P. A. Raynor and Wife to Rialto Irrigation District.]

6. Deed dated April 25th, 1893, from P. A. Raynor and wife to Rialto Irrigation District, duly acknowledged and thereafter recorded on October 19th, 1893.

Said deed conveys to said District ninety-five inches of water and contains same recitals as deed between same parties of date January 24th, 1893, referred to above. [96—49]

[Exhibit—Deed Dated June 2, 1893, from Semi-Tropic Land and Water Company to Rialto Irrigation District.]

7. Deed dated June 2d, 1893, from Semi-Tropic Land and Water Company to Rialto Irrigation Dis-

trict, duly acknowledged and thereafter recorded on October 19th, 1893.

Said deed conveys to said District two hundred inches of water from the "Ferguson Ranch," described in contract between said Company and said District of date May 26th, 1896, above set forth.

[Exhibit—Contract Dated November 7, 1890, Between N. W. Stowell and Semi-Tropic Land and Water Company.]

8. Contract of date November 7th, 1890, between N. W. Stowell with the Semi-Tropic Land and Water Company.

Under said contract, Stowell agrees to furnish a good and serviceable pipe of cement concrete and lay the same in a good workmanlike manner in ditches to be constructed by the Semi-Tropic Land and Water Company, at prices stated to be paid as follows: "when made 60% of contract price, when laid 25% of contract price, and balance 15% when each mile is completed. Payment to be made in cash or in Rialto District bonds, at 90% face value, which bonds issued under the "Wright Act" on the land, are to be guaranteed legal and perfect by the Company.

[Exhibit—Contract Dated June 4, 1892, Between Stowell Cement Pipe Company and Semi-Tropic Land and Water Company.]

9. Contract of date June 4th, 1892, between Stowell Cement Pipe Company with Semi-Tropic Land and Water Company.

Under said contract, the Stowell Cement Pipe

Company agrees to furnish good cement concrete pipe and lay the same in ditches to be constructed by Semi-Tropic Land and Water Company, at prices stated, to be paid as follows: 60% of contract price when made and 40% when laid, in lots of \$4000.

The amount of pipe to be laid being amount that may be required to finish the piping of the Rialto Irrigation District. Payments to be made in bonds of District at par.

**[Exhibit—Contract Dated June 12, 1893, Between
Rialto Irrigation District and Semi-Tropic Land
and Water Company.]**

10. Contract of date June 12th, 1893, between Rialto Irrigation District with Semi-Tropic Land and Water Company. [97—50]

“THIS AGREEMENT, Made and entered into by and between the Semi-Tropic Land and Water Company, a corporation, organized and existing under the laws of the State of California, with its principal place of business at Rialto, California, party of the first part, and the Rialto Irrigation District, a public corporation organized in pursuance of an act of Legislature of the State of California, providing for the organization of Irrigation Districts, located in the County of San Bernardino, California, party of the second part;

WITNESSETH:—That whereas, there is now in existence and in force by and between said party, various contracts with amendments and supplements thereto and both parties deem it for the best interests of each, that a new contract be made and entered into, to cancel and supplant all previous contracts

between them, to wit, contract dated December 10th, 1890, with the modifications thereto of December 10th and December 22d, 1890, and the contract dated May 26th, 1892.

THEREFORE, said parties hereto do hereby agree to abrogate and cancel said previous contracts with modifications and amendments in so far as they remain unexecuted and that said party of the first part hereby agrees to sell water in the amounts and manner as hereinafter set forth and said second party agrees to buy the same. Said water to be measured under a four-inch pressure in the manner customary in measuring water. Same to be gravity supply and furnished from springs and natural streams and developed by means of artesian wells, tunnel work and open cuts from lands in San Bernardino County and in certain amounts from said lands as hereinafter mentioned, to wit: 301½ inches of water measured as aforesaid from those lands known as the "Meeks Mill" property in accordance with the contract with the Semi-Tropic Land and Water Company [98—51] and P. A. Raynor bearing date of May 26th, 1892, which contract is of record in the Recorder's office of San Bernardino County and to which reference is made hereby for the terms thereof and for a more particular description of said land and if said Raynor shall be unable to furnish the amount of water so agreed by him to be furnished, the party of the first part shall have the privilege of substituting other water from a source equally as high for any deficiency. Said water to be delivered in installments of not less than

twenty-five inches measured as aforesaid between the first day of May and the first day of December in any year and as part payment thereof, said party of the second part agrees to turn over and deliver to said first party bonds of the Rialto Irrigation District at par value, at the rate of \$275 per inch for each inch of water so delivered.

Said party of the first part further agrees to and does hereby convey and pledge to the party of the second part the following described property, to-wit:—

Farm lots 184 and the West 116.37 acres of farm lot 185 and 186 together with ten acres of land in what is known as the “Lord ranch” which property is more particularly described as follows, to wit:—

The Southeast ten acres of the tract known as the George Lord ranch commencing at the quarter section corner on the east side of Section 36, Township 1 North, Range 5 West, S. B. M.; thence West 11.15 chains; thence North 8.97 chains; thence East 11.15 chains; thence South 8.97 chains to the place of beginning, excepting nine inches of water from said last described tract of land, for the furnishing to the said party of the second part of $348\frac{1}{2}$ inches of water. Said $348\frac{1}{2}$ inches of water to include the three hundred inches [99—52] heretofore conveyed to said second party from said last described tract of land; the development for the $348\frac{1}{2}$ inches of water shall be commenced at once and when the full amount of $348\frac{1}{2}$ inches of water, including the amount now rising or flowing therefrom is developed thereon, said party of the second part agrees as

part payment thereof to turn over and deliver to the party of the first part, the sum of \$13,500 in bonds of the Rialto Irrigation District at par. The measurement thereof to be made between the first day of May and the first day of December, one hundred fifty inches of which water shall be delivered by June 1st, 1895, and the entire amount of 3481½ inches to be delivered by June 1st, 1896. Hereby granting to said party of the second part the right of entry upon said land and to take such reasonable and proper measures thereon as may be necessary to develop and maintain the flow of such water as may be conveyed to said second party from said lands. Said water right of 3481½ inches and the right of entry on said land to be and remain a perpetual servitude thereon and constitute a first lien in and upon said tract of land to the extent of the right so granted. Said party of the first part agrees to complete the laying of all lateral pipes and mains within the boundaries of said District according to the plat hereto attached as soon as may be or as rapidly as the necessities of the District may require, such laterals to be of sufficient capacity to irrigate such lands as are to be irrigated from the same and to be laid at least 18 inches under the ground. Such pipe to be cement pipe in the proportion of one part cement with four parts sand or gravel where it is subjected to not to exceed nine foot in pressure and between a nine foot pressure up to a fourteen foot pressure, vitrified pipe shall be used and where said pipes are subjected [100—53] to exceed a fourteen foot pressure, iron pipe shall be

used. That when said laterals and mains are completed, said second party agrees to pay to said first party, in part payment thereof, the sum of \$32,000 in bonds of the Rialto Irrigation District at par or said first party shall be entitled to receive a *pro rata* amount of said \$32,000 in proportion as the work is completed.

Said party of the first part further agrees to build a third lower main pipe line as shown on the map hereto attached commencing at about the center of the southern boundary line of farm lot 186 and running southwesterly as shown by a dotted line to about the southwesterly corner of lot 364 or if found practicable, the termination of said line shall in the discretion of said first party, be made at a higher altitude.

Said line to be laid as soon as practicable and in any event not later than June, 1895, and in consideration of One Dollar, paid to it by said party of the second part, the party of the first part hereby binds itself and agrees to and with the party of the second part that for and during the time to which the fulfillment of all the stipulations of this contract is limited, that said second party shall have the privilege and option to purchase of and from the party of the first part at the election of said second party, a perpetual right of way in said third pipe line for carrying capacity for 450 inches of water to the point where said pipe line crosses Pepper Avenue within the boundaries of said District, and a right of way in the balance of said pipe line sufficient to carry all the water necessary to irrigate

lands in said District lying South of said third line in proportion to the amount of water owned by the said District. In case said party of the second part elects to purchase said right of way [101—54] in said pipe line it shall be the sum of \$5,000 in cash to be paid on or before June 1st, 1896, with interest at six per cent per annum from the date of completion of said pipe line. Said \$500,000 bonded indebtedness of said District. If said party fails in the time mentioned to purchase said property, then this option to purchase said right of way shall terminate and be of no further force or effect and said first party shall retain said One Dollar as the price of this option. Said party of the second part does hereby grant to the party of the first part or its assigns, upon the completion of said third main, carrying capacity for water in the middle 30 inch main as shown on the map hereto attached for any amount of water over and above the amount necessary to irrigate lands in the District as the same is now composed, said reservation by said second party not to exceed the amount of 451½ inches of water, said second party reserving, however, the right to an additional carrying capacity in the event of their buying more than 1,000 inches of water, in which case they may increase their carrying capacity therein in such proportion to the amount of additional water purchased as the acreage to be irrigated from said line bear to the acreage in the District, and said party of the second part grants unto the party of the first part carrying capacity for water in the upper 30 inch main as shown on the map hereto attached

for any amount of water over and above the amount necessary to irrigate the District lands water from said line. Said reservation by said second party not to exceed the amount of 300 inches unless said second party shall purchase more than 1,000 inches of water in which case they may have additional carrying capacity in said line in such proportion to the amount of additional water purchased as the acreage to be irrigated from said line bears to the total acreage of the District. It being the [102—55] intention of the parties hereto to grant to the party of the first part such carrying capacity in said two pipe lines as may not be necessary for said second party to use to irrigate the lands at present contained within the boundaries of the Rialto Irrigation District. Said first party to be responsible for any damage to either of said lines resulting from the carelessness or excessive use thereof by said first party. Said first party to put in weirs for measuring water at the connection of all lateral pipes with the principal mains.

Said party of the first part further agrees that it will pipe the 200 inches of water heretofore deeded to said second party from the lands known as the Ferguson ranch to such a point of junction with the upper 30 inch main as said water can be carried on proper grade, such connection to be as near the junction of Eucalyptus Avenue and the upper 30 inch main as is practicable. Such pipe line to be completed on or before the first day of September, 1893, and if not completed by December 1st, 1893, said party of the first part shall forfeit to the party

of the second part the sum of \$10 per day for each day thereafter, that said line remains uncompleted. Upon the completion and fulfillment of the covenants and agreements herein mentioned by the party of the first part including the completion of the lower main, the delivery of the water according to the terms of the contract with P. A. Raynor and the delivery of the 348½ inches of water from what is known as the Lord place and lots 184 and the West half of 185 and the West half of 186 and the completion of the pile line from the Ferguson ranch to the upper 30 inch main and after the full amount of water has been delivered as aforesaid and the full flow thereof maintained for a period of sixty days from the measurement thereof, which [103—56] measurement shall be between the first day of May and the first day of December and conveyed to said second party by a proper deed of conveyance accompanied by an abstract or certificate of title showing the same to be free of encumbrance, then said second party agrees to turn over and deliver to said first party all of the remaining bonds of the \$500,000 issue of the Rialto Irrigation District. It is agreed by and between the parties hereto that all the remaining bonds of the Rialto Irrigation District shall be forthwith deposited with W. S. Hooper, Cashier of the San Bernardino National Bank, of San Bernardino, Cal. as trustee for the parties hereto, to be by him held in accordance with the terms of this agreement and turned over and delivered to the party of the first part as provided herein upon the order of the Board of Directors of the respective

parties hereto. If said party of the first part shall fail or neglect to keep any or all of the covenants herein agreed by said first party to do, then said second party may, by giving said first party 30 days' notice in writing of its intention so to do such work and perform such agreements as fully as said first party might or could do, such work to be done and agreements performed in a proper, economical and workmanlike manner and the expense thereof deducted from the amount of bonds which would otherwise be due and payable to said first party under the terms of this agreement hereby granting to the party of the second part the right to enter upon and develop water to the extent of 348½ inches from the lands hereinbefore described and to maintain the flow thereof granting to the party of the second part the right of way over and across any of the land of the party of the first part for any and all of the pipe lines hereinbefore mentioned and upon the completion and fulfillment by said second party of any such defaulted agreements the balance remaining of the [104—57] \$500,000 issue of bonds shall be turned over to the party of the first part after deducting the expense which said party of the second part may have reasonably incurred. It is further agreed by and between the parties hereto that all questions arising between them as to the sufficiency of the pipe lines herein mentioned or the measurement of the water herein referred to shall be submitted to a board of arbitration consisting of three competent engineers, one of whom to be named by the party of the first part, one by the party of the

second part and the third by the two so chosen, their determination of any such questions submitted to be final and conclusive and the expense of said board to be shared equally between the parties hereto.

IN WITNESS WHEREOF, the parties hereto have by resolution of their respective Board of Directors caused these presents to be subscribed by their proper officers and the respective corporate names and seals to be hereto affixed this 12th day of June, 1893.

SEMI-TROPIC LAND AND WATER
COMPANY.

By WILLARD M. SHELDON,
Vice-president.

And ANDREW P. WILSON,
Secretary.

RIALTO IRRIGATION DISTRICT,
By C. A. KINGMAN,
Prest.,

And DEVILLO ROBINSON,
Sec."

[**Exhibit—Contract Dated January 2, 1895, Between
N. W. Stowell and Rialto Irrigation District.**]

11. Contract of date January 2d, 1895, between N. W. Stowell with Rialto Irrigation District.

"THIS AGREEMENT, Made and entered into between N. W. Stowell, of Los Angeles, and the Rialto Irrigation District, a public corporation, organized in pursuance of an act of the Legislature of the State of California, located in San [105—58] Bernardino County, California, WITNESSETH:

THAT WHEREAS, there was entered into on the

12th day of June, 1893, an agreement between the Semi-Tropic Land and Water Company and the Rialto Irrigation District, and on the 22d day of March, 1894, the Superior Court of the County of San Bernardino appointed Willard M. Sheldon, Receiver of said Semi-Tropic Land and Water Company, and under instructions of an order, No. 17, of said Court of date October 25, 1894, said Sheldon as such receiver assigned and conveyed all interest of said Semi-Tropic Land and Water Company in said contract of date June 12th, 1894, so far as the same related to constructing pipe line in said District to N. W. Stowell;

AND WHEREAS, both parties hereto desire to modify and extend said contract for constructing said pipe lines;

NOW, THEREFORE, it is agreed between the parties hereto that said contract be, and the same is modified as follows, which shall from and after the date hereof, together with said contract be the contract for constructing the pipe lines of said district. Said N. W. Stowell agrees to furnish and lay a good and serviceable pipe of cement concrete and to excavate all trenches necessary, and backfill the same, covering the pipe to a depth of eighteen inches, and to furnish all gates and turnouts necessary, all to be of the same general style and quality as the work heretofore done in said District.

Said pipe to be made of one part good Portland cement by measure, and four parts sand and gravel.

The following are the estimated quantities and sizes required:—

10 inch pipe 27,020 feet	8 inch pipe 7800 feet.
14 inch pipe 6,800 feet	22 inch pipe 3838 feet.
20 inch pipe 3,550 feet	30 inch pipe 7310 feet.

Prices agreed upon are as follows: (Here follows prices.) [106—59]

The sizes of the pipe made may be modified as the District Engineer may elect, provided the whole cost does not exceed the total cost of the above estimate at prices agreed upon. The District to provide necessary and convenient rights of way for hauling and laying pipe.

THE RIALTO IRRIGATION DISTRICT agrees to pay for pipe in Bonds of said District at par as follows:

Upon each \$5000 worth of pipe when made at yard there shall be paid said Stowell \$3000 in Bonds at par. Thirty-five days after the completion of laying of each successive mile of pipe, the balance due upon such mile shall be paid.

Upon completion of a well 20 feet in diameter and 30 feet deep, to the satisfaction of the District Engineer, there shall be paid STOWELL the sum of \$2500 in Bonds.

Fifty per cent in value of the work to be done under this AGREEMENT shall be fully performed on or before March 1st, 1895.

Ninety per cent in value of the work to be performed on or before June 1st, 1895. The whole to be prosecuted diligently to completion.

The said STOWELL further agrees to furnish and lay 2240 feet of pressure pipe at the Lord Place for the sum of (\$2475.00) twenty-four hundred and

seventy-five dollars for 22 inch pipe of No. 14 iron; all payable in bonds at par, as work is completed. All earthwork and hauling from Rialto Station to ditch to be done by District.

IT IS UNDERSTOOD AND AGREED that all pipe heretofore furnished or constructed, or to be furnished or constructed for the Rialto Irrigation District or pipe system, and not heretofore deeded to said district, shall remain and be, the property of N. W. Stowell until the bonds received, or to be received therefore, shall have been paid, and upon completion [107—60] of the work herein agreed upon a deed of all the interests of said Stowell and the Stowell Cement Pipe Company to said pipe, and a deed from N. W. Stowell of a right of way for pipe lines, to said District, shall be executed and placed in escrow with W. S. Hooper, Cashier, San Bernardino National Bank, until conditions above are fulfilled.

IN WITNESS WHEREOF, the Board of Directors of said District by resolutions have caused these presents to be subscribed by its proper officers and the corporate name and seal to be hereunto affixed this 2d day of January, 1895.

(Seal of Corporation)

THE RIALTO IRRIGATION DISTRICT,

By DEVILLO ROBINSON,

President,

And JAMES E. MACK,

Secretary.

N. W. STOWELL.”

[Exhibit—Certified Copy Petition of Receiver of Semi-Tropic Land and Water Company, Filed October 6, 1894, in the Superior Court of San Bernardino County.]

12. Certified copy of Petition of the Receiver of the Semi-Tropic Land and Water Company, filed on October 6th, 1894, in the Superior Court of San Bernardino County, which petition sets forth as exhibits thereto, the contract of date June 4th, 1892, between Stowell Cement Pipe Company with Semi-Tropic Land and Water Company, and contract of June 12th, 1893, between Rialto Irrigation District and Semi-Tropic Land and Water Company, above set forth, and being numbered above respectively 9 and 10. Said petition set forth the insolvency of the Semi-Tropic Land and Water Company, and its inability to complete its said contract of date June 12th, 1893, and the willingness of the Stowell Cement Pipe Company to complete said contract, upon an assignment thereof being made to said company, under an order of said court, and the willingness of both said District and said Stowell Cement Pipe Company to relieve said Semi-Tropic Land and Water Company from [108—61] all responsibility in relation to said contract, and for the delivery to said Stowell Cement Pipe Company of whatever bonds of said District might thereafter accrue under said contract.

Order of Court upon said petition, authorizing such assignment, and such assignment to Stowell Cement Pipe Company, pursuant to such order by the Receiver.

**[Exhibit—Judgment-roll in Special Proceedings
Brought in the Superior Court of San Bernardino
County.]**

13. The Judgment-roll in the Special Proceedings brought in the Superior Court of San Bernardino County, California, entitled "In the Matter of the Petition of the Board of Directors of the Rialto Irrigation District, praying that the proceedings for the issue and sale of the bonds of said District may be examined, approved and confirmed by Court."

The petition, among other things, sets forth that the Board of Directors of the District estimated and determined the amount of money necessary to be raised for the purpose of constructing necessary irrigating canals and works and acquiring the necessary property and rights therefor, and otherwise carrying out the provisions of the acts of the Legislature relating to Irrigation Districts, and that the said Board estimated and determined such amount as \$500,000.00; that a special election was properly called at which there was submitted the question whether or not the bonds of said District should be issued in said amount; that notice thereof was properly given; that at such election, thirty-two votes were cast in favor thereof, and none against the same, and that thereafter, said Board ordered the bonds of said District to be issued in said sum; that on November 29th 1890, said Board accepted a proposition from the Semi-Tropic Land and Water Company for the exchange by said District of all of said bonds at par, for one thousand inches of

water to be [109—62] developed by artesian wells, and to be conveyed to lands in said District; the said Semi-Tropic Company also agreeing to convey to said District, the lands constituting the source of supply of said water, and all pipe, pipelines, rights of way and privileges used to convey, deliver and distribute said water; that the District was authorized to enter into the contract of December 10th, 1890, with said Semi-Tropic Company (said contract being hereinbefore set forth in No. — hereof) and briefly setting forth the terms of said contract; that these special proceedings were authorized on November 17th, 1890, by the Board of Directors of said District; that under the prayer of said petition, the Court was asked to examine, and determine the legality and validity of, and confirm, each and all of the proceedings for the organization of said District under the provisions of said Act, from and including the petition for the organization of said District, and all other proceedings which may affect the legality or validity of said bonds and the order for the sale and exchange thereof.”

Due and legal notice of the hearing of said petition was given as required by law.

Upon such hearing, a decree of Court was duly given, made and entered therein on January 8th, 1891, whereby it was, among other things, decreed that said petition was presented to said court on December 12th, 1890; that said District was duly and legally organized; that the Board of Directors of said District estimated and determined the amount of money necessary to be raised for the purpose of

constructing necessary irrigation canals and works and acquire necessary property therefor, which said Board estimated and determined [110—63] to be \$500,000.00; that a special election had been called, as set forth in the petition, and that notice had been properly given thereof, that such bonds had been authorized by such election, that said Board authorized the bonds to be issued in the sum of \$500,000.00; that the said Board had accepted the proposition from said Semi-Tropic Company, as set forth in said petition, for the exchange of bonds for water, etc.; that said contract of December 10th, 1890, referred to in said petition was duly entered into, that all of the allegations contained in the petition were true and correct; that all proceedings which might affect the legality or validity of said bonds, and the order for the exchange thereof, at par, as set forth in said contract, had been examined and determined by the Court, and that all of said proceedings were legal and valid, and confirmed. [111—64]

The said defendant, within the time allowed by law and rule of Court and as extended by order of Court, hereby proposes the foregoing Bill of Exceptions, containing all the proceedings had on the trial of said cause and asks that the same be settled and allowed, if correct.

HENRY GOODCELL,
F. A. LEONARD,
Attorneys for Defendant.

Due and timely service of a copy hereof is hereby admitted this 30 day of October, 1913.

BURT CHELLIS,

J. W. SWANWICK,

Attorneys for Plaintiff.

It is hereby stipulated that the foregoing Bill of Exceptions may be settled and made a part of the record herein.

Dated ———, 1913.

_____ ,

_____ ,

Attorneys for Plaintiff.

_____ ,

_____ ,

Attorneys for Defendant.

The foregoing Bill of Exceptions, duly proposed and agreed upon by counsel for the respective parties, is correct in all respects and is hereby approved, allowed and made a part of the record herein.

Dated this — day of ———, 1913.

_____ ,

Judge. [112]

[Endorsed]: Original. No. 1419. In the District Court of the United States, Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Proposed Bill of Exceptions. Filed Oct. 30, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Henry Goodcell and Leonard & Surr, Attorneys for ———, Old Postoffice Block, San Bernardino, California. [113]

[Order Approving, etc., Bill of Exceptions.]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

C. C. No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Defendant.

The attached Bill of Exceptions duly proposed is correct in all respects and is hereby approved, allowed and made a part of the record herein.

Dated this 9th day of December, 1913.

OLIN WELLBORN,

Judge.

[Endorsed]: C. C. No. 1419. United States District Court, Southern District of California, Southern Division. N. W. Stowell vs. Rialto Irrigation District. Engrossed Bill of Exceptions. Filed Dec. 9, 1913. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [114]

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

**Petition [of Rialto Irrigation District] for Writ of
Error.**

The above-named defendant, the Rialto Irrigation District, feeling itself aggrieved by the judgment entered on the 6th day of October, 1913, in the above-entitled cause, in favor of said plaintiff and against this defendant, comes now and files herewith an assignment of errors and respectfully petitions the above-named court for its allowance of a Writ of Error to review in the United States Circuit Court of Appeals for the Ninth Circuit, the said judgment, to the said District Court of the United States, Southern District of California, Southern Division, under and according to the laws of the United States, in that behalf made and provided and that a transcript of the records and proceedings and papers on which said judgment was made and entered, duly authenticated may be sent to the said Circuit Court of Appeals.

Wherefore, your petitioner prays that the said Writ of Error be issued for the correction of errors so complained of, and that a transcript of the records

and proceedings and papers on which said judgment was made and entered, duly authenticated, may be sent to said Circuit Court of Appeals, and that an order may be made fixing the amount of bond required for costs.

HENRY GOODCELL,
F. A. LEONARD,
Attorneys for Petitioner. [115]

[Endorsed]: No. 1419. In the United States District Court, Ninth Circuit, Southern District of California. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Petition for Writ of Error. Filed Mar. 17, 1914. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy. Postoffice Block, San Bernardino, Cal. [116]

*In the District Court of the United States for the
Southern District of California, Southern Division.*

C. C. No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

**Assignment of Errors [of the Rialto Irrigation
District].**

The defendant in this action, in connection with its petition for a writ or error herewith filed, makes the following assignment of errors, upon which it will rely upon its appeal from the judgment in this

action, and upon which it claims such judgment should be reversed, to wit:

1. The Court erred in overruling the defendant's demurrer to the amended complaint, for the reason that said amended complaint does not state facts sufficient to constitute a cause of action.

2. The Court erred in overruling said demurrer as to the first count of said complaint, for the reason that said first count does not state facts sufficient to constitute a cause of action.

3. The Court erred in overruling said demurrer as to the second count of said complaint, for the reason that said second count does not state facts sufficient to constitute a cause of action. [117]

4. The Court erred in rendering the judgment made and entered in this cause, for the reason that the amended complaint does not sustain said judgment, nor any part thereof.

5. The Court erred in rendering said judgment, for the reason that the supplemental complaint does not sustain said judgment, nor any part thereof.

6. The Court erred in rendering said Judgment, for the reason that no findings of fact were made or filed, and such findings were not waived.

7. The Court erred in rendering said judgment, for the reason that no proper or sufficient findings of fact were made or filed, and such findings were not waived.

8. The Court erred in rendering said judgment, for the reason that the facts found, expressly or by implication, are not sufficient to justify the conclusions based thereon or the said judgment, and par-

ticularly in the following respects:

(a) The facts so found show that none of the bonds alleged in the amended complaint or in the supplemental complaint bore date at the time of their issue, as required by the statute authorizing the issue of bonds by the defendant.

(b) Said facts show that none of said bonds ran, by their terms, for the length of time they were required to run by the provisions of said statute.

(c) Said facts show that none of said bonds were negotiable in form, as required by the provisions of said statute. [118]

(d) Said facts show that certain coupons alleged and sued upon in the amended complaint matured more than four years prior to the commencement of the action; and the alleged cause of action as to each and all of said coupons was barred by statute of limitations, as pleaded in the defendant's amended answer.

(e) Said facts show that certain coupons alleged and sued upon in the supplemental complaint matured more than four (4) years prior to the filing of said supplemental complaint; and the alleged cause of action as to each and all of said coupons was barred by statute of limitation, as pleaded in said amended answer (said answer and plea, by stipulation, being made to apply as an answer and plea to said supplemental complaint).

9. The Court erred in making its findings of fact, express or implied, for the reason that certain of such findings, necessary to sustain the conclusions and judgment of the Court, were not justified by the

evidence, and were without substantial support by any evidence, and particularly in the following respects:

(a) There was no evidence to justify or support the finding to the effect that said bonds or any of them bore date at the time of their issue.

(b) There was no evidence to justify or support the finding to the effect that said bonds, or any of them, ran by their terms, or ran in fact, for the term or period prescribed by statute. [119]

(c) There was no evidence to justify or support the finding to the effect that said bonds, or any of them, were negotiable in form, or in the form required by the statute under which they are alleged to have been issued.

(d) There was no evidence to justify, or support the finding to the effect that said bonds, or any of them, were issued or delivered for a lawful or valid consideration.

(e) There was no evidence to justify or support the finding to the effect that said bonds, each and all of them, were not issued or delivered for a consideration which, wholly or in great part, consisted in the doing of construction work for the defendant.

(f) There was no evidence to justify or support the finding to the effect that none of said bonds were issued or delivered for a consideration which, wholly or in great part, consisted in the doing of construction work for the defendant.

(g) There was no evidence to justify or support the finding to the effect that said bonds, or any of said bonds, were issued or delivered to any pur-

chaser or taker on November 17, 1890, or on January 1, 1891, or at the time of their actual date or their apparent date or their alleged date.

(h) There was no evidence to justify or support the finding to the effect that said bonds, or any of them, were ever lawfully issued, or were lawful obligations of the defendant. [120]

(i) There was no evidence to justify or support the finding to the effect that the board of directors of the defendant, on December 12, 1890, or at any time, brought an action in the Superior Court of San Bernardino County to determine the validity of said bonds, or any of them.

(j) There was no evidence to justify or support the finding to the effect that on January 3, 1891, or at any time, said Superior Court, by a judgment duly given and made in said action, or given or made at all, declared said bonds or any of them to be valid.

(k) There was no evidence to justify or support the finding to the effect that the plaintiff acquired or purchased said bonds or coupons, or any of them, in good faith and in the ordinary course of business, without knowledge or notice of their invalidity, or of any defense thereto.

(l) There was no evidence to justify or support the finding to the effect that the plaintiff did not acquire or purchase said bonds and coupons, or any of them, with notice or knowledge of each or any of the facts alleged in the defendant's amended answer to the amended complaint as grounds of their invalidity and as defenses thereto.

(m) There was no evidence to justify or support

the finding to the effect that none of the causes of action alleged in the amended complaint, as to any of the coupons therein sued upon, was barred, by statute of limitations, as pleaded in the defendant's amended answer. [121]

(n) There was no evidence to justify or support the finding to the effect that none of the causes of action alleged in the supplemental complaint, as to any of the coupons therein sued upon, was barred by statute of limitation, as pleaded in said amended answer.

10. The Court erred in rendering its said judgment, for the reason that the amount of said judgment is in excess of the aggregate amount of all coupons alleged and sued upon in the amended complaint and the supplemental complaint.

Upon the foregoing assignments of error, and upon the record in said cause, the said defendant prays that said judgment may be reversed.

Dated March 17th, 1914.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant (and Plaintiff in Error).

[Endorsed]: C. C. 1419. In the District Court of the United States for the Southern District of California, Southern Division. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Assignment of Errors. Filed Mar. 17, 1914. Wm. M. Van Dyke, Clerk. By Leslie S. Colyer, Deputy Clerk. [122]

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

**Order Allowing Writ of Error [on Behalf of Rialto
Irrigation District].**

On this 17th day of March, 1914, came the defendant in the above-entitled action, by its attorneys, and filed herein and presented to the court its petition praying for the allowance of a Writ of Error, intended to be urged by it, praying also that a transcript of the record and proceedings and papers upon which the judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals, for the Ninth Circuit, and that such other and further proceedings may be had as may be proper in the premises; on consideration whereof, the Court does allow the Writ of Error upon the defendant giving a bond in the sum of Three Hundred Dollars (\$300.00), which shall operate as a cost bond; and

IT IS FURTHER ORDERED that said petition be and the same is hereby allowed and granted and that the Writ of Error be allowed in said action, returnable before the United States Circuit Court of Appeals for the Ninth Circuit, on the 14th day of

April, 1914, and that a transcript of the record and all of the proceedings and papers on which the judgment was made and entered in this cause shall be made and transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit. [123]

IT IS FURTHER ORDERED that the bond in the sum of Three Hundred Dollars, tendered by said defendant, be and the same is hereby approved as the bond for costs on the Writ of Error herein.

OLIN WELLBORN,

Judge.

[Endorsed]: No. 1419. In the United States District Court, Ninth Circuit, Southern District of California. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Order Allowing Writ of Error. Filed Mar. 17, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Postoffice Block, San Bernardino, Cal. [124]

**[Bond on Writ of Error Sued Out by Rialto
Irrigation District.]**

*In the District Court of the United States, Southern
District of California, Southern Division.*

No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

KNOWN ALL MEN BY THESE PRESENTS: That we, Rialto Irrigation District, as principal and J. C. Boyd and W. E. Leonard, as sureties are held and firmly bound unto N. W. Stowell in the just and full sum of Three Hundred Dollars to be paid to said N. W. Stowell, his heirs, executors, administrators or assigns, to which payment, well and truly to be made, we bind ourselves, our successors and assigns, jointly and severally by these presents.

Sealed with our seals and dated this 17th day of March, in the year of our Lord, 1914.

Whereas, lately at the July term, 1913, of the said District Court of the United States, Southern District of California, Southern Division, in a suit pending in said court, between N. W. Stowell, plaintiff, and Rialto Irrigation District, defendant, a judgment was rendered against said Rialto Irrigation District, defendant, and in favor of the plaintiff, and the said Rialto Irrigation District, defendant, in said action, has obtained from the United States Circuit Court of Appeals, a Writ of Error, to reverse the judgment in the aforesaid suit, and a citation directed to the said N. W. Stowell, citing and admonishing him to be and appear in the said United States Circuit Court of Appeals for the Ninth Circuit, to be holden [125] at San Francisco, California, not exceeding thirty days after the date of said citation. Now, the condition of the above obligation is such that if the said Rialto Irrigation District, the defendant in said action, plaintiff in error as aforesaid, shall prosecute its said Writ of Error to effect, and answer all costs which may be ad-

judged against it, if it fails to make good its plea, then this obligation to be void, otherwise, to remain in full force and effect.

RIALTO IRRIGATION DISTRICT.

By HENRY GOODCELL and
F. A. LEONARD,

Its Attorneys.

J. C. BOYD.

W. E. LEONARD. [126]

State of California,

County of San Bernardino,—ss.

J. C. Boyd and W. E. Leonard, the sureties named in the foregoing undertaking, being first duly sworn, each for himself, deposes and says: That he is a resident and freeholder within the State of California, and is worth the amount specified in said undertaking, as the penalty thereof, and property situated within said State of California, over and above all his just debts and liabilities, exclusive of property exempt from execution.

[Seal]

J. C. BOYD.

W. E. LEONARD.

Subscribed and sworn to before me this 17th day of March, 1914.

M. A. KERR,

Notary Public in and for the County of San Bernardino, State of California.

Approved March 17th, 1914.

OLIN WELLBORN,

Judge.

[Endorsed]: Original. No. 1419. In the United States District Court, Ninth Circuit, Southern Dis-

trict of California. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, Defendant. Bond for Costs. Filed Mar. 17, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. Post-office Block, San Bernardino, Cal. [127]

UNITED STATES OF AMERICA.

*District Court of the United States, Southern
District of California.*

CLERK'S OFFICE.

No. 1419.

N. W. STOWELL

vs.

RIALTO IRRIGATION DISTRICT.

**Praeipie [of Rialto Irrigation District for
Transcript of Record].**

To the Clerk of Said Court:

Sir: Please issue copies of the following papers for the record on appeal in the above-entitled action, to wit:

1. Amended complaint.
2. Demurrer to amended complaint.
3. Order overruling demurrer to amended complaint.
4. Amended answer to amended complaint.
5. Stipulation filed July 5th, 1912.
6. Supplemental complaint.
7. Findings.
8. Judgment.
9. Petition for writ of error.

10. Assignment of errors.
11. Order allowing writ of error.
12. Writ of error.
13. Citation on writ of error.
14. Bond.
15. Certificate of clerk.
16. Bill of exceptions.

HENRY GOODCELL and
F. A. LEONARD,

Attorneys for Defendant and Plaintiff in Error.

[128]

[Endorsed]: No. 1419. U. S. District Court,
Southern District of California, Southern Division.
N. W. Stowell vs. Rialto Irrigation District.
Praecipe for Transcript on Writ of Error. Filed
Mar. 23, 1914. Wm. M. Van Dyke, Clerk. By
Chas. N. Williams, Deputy Clerk. [128½]

UNITED STATES OF AMERICA.

*District Court of the United States, Southern
District of California.*

CLERK'S OFFICE.

No. 1419.

N. W. STOWELL

vs.

RIALTO IRRIGATION DISTRICT.

**Amended Praecipe [of Rialto Irrigation District for
Transcript of Record].**

To the Clerk of Said Court:

Sir: Please issue: COPIES OF THE FOLLOW-

ING PAPERS for the record on appeal in the above-entitled action, to wit:

1. Complaint.
2. Demurrer to complaint.
3. Order *overruling complaint*.
4. Amended complaint.
5. Demurrer to amended complaint.
6. Order overruling demurrer to amended complaint.
7. Amended answer to amended complaint.
8. Stipulation filed July 5th, 1912.
9. Supplemental complaint.
10. Findings.
11. Judgment.
12. Petition for writ of error.
13. Assignment of errors.
14. Order allowing writ of error.
15. Writ of error.
16. Citation on writ of error.
17. Bond.
18. Certificate of clerk.
19. Bill of exceptions.

HENRY GOODCELL and
F. A. LEONARD,

Attorneys for Defendant and Plaintiff in Error.

[129]

[Endorsed]: No. 1419. U. S. District Court, Southern District of California. N. W. Stowell vs. Rialto Irrigation District. Amended Praecipe for Transcript for Record on Appeal. Filed March 27, 1914. Wm. M. Van Dyke, Clerk. By Chas. N. Williams, Deputy Clerk. [130]

[Certificate of Clerk U. S. District Court to
Transcript of Record on Writ of Error.]

*In the District Court of the United States, in and
for the Southern District of California, South-
ern Division.*

C. C. No. 1419.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT,

Defendant.

I. Wm. M. Van Dyke, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing one hundred and thirty (130) typewritten pages, numbered from 1 to 130, inclusive, and comprised in one (1) volume, to be a full, true and correct copy of the Complaint, Demurrer to Complaint, Order Sustaining Demurrer to Complaint, Amended Complaint, Demurrer to Amended Complaint, Order Overruling Demurrer to Amended Complaint, Amended Answer to Amended Complaint, Stipulation filed July 5, 1912, Supplemental Complaint, Findings, Judgment, Bill of Exceptions, Petition for Writ of Error, Assignment of Errors, Order Allowing Writ of Error, Bond on Writ of Error and Amended Praecipe for Transcript, all in the above and therein entitled cause; and I do further certify that the foregoing constitutes the record in said cause as specified in the said Praecipe

for Transcript, filed in my office on behalf of the defendant and plaintiff in error by its attorneys of record.

I do further certify that the cost of the foregoing record is \$70.05, the amount whereof has been paid me by [131] the Rialto Irrigation District, the plaintiff in error in said cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this 22d day of September, in the year of our Lord one thousand nine hundred and fourteen, and of our Independence the one hundred and thirty-ninth.

[Seal] WM. M. VAN DYKE,
Clerk of the District Court of the United States of
America, in and for the Southern District of
California. [132]

[Endorsed]: No. 2491. United States Circuit Court of Appeals for the Ninth Circuit. Rialto Irrigation District, a Corporation, Plaintiff in Error, vs. N. W. Stowell, Defendant in Error, and N. W. Stowell, Plaintiff in Error, vs. Rialto Irrigation District, a Corporation, Defendant in Error. Transcript of Record. Upon Writ of Error and Cross-writ of Error to the United States District Court for the Southern District of California, Southern Division.

Received and filed September 29, 1914.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

**[Order Extending Time to June 1, 1914, to Docket
Cause on Writ of Error.]**

*In the United States Circuit Court of Appeals,
Ninth Judicial Circuit.*

RIALTO IRRIGATION DISTRICT,
Plaintiff in Error,
vs.

N. W. STOWELL,

Defendant in Error.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said plaintiff in error to docket said cause and file the record thereof, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 1st day of June, 1914.

Dated at Los Angeles, April 10th, 1914.

OLIN WELLBORN,
United States District Judge, for the Southern District of California.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Rialto Irrigation District, Plaintiff in Error, vs. N. W. Stowell, Defendant in Error. Order Enlarging Time to

Docket Cause and File Record. Filed Apr. 13, 1914.
F. D. Monckton, Clerk.

**[Order Extending Time to August 1, 1914, to Docket
Cause on Writ of Error.]**

*In the United States Circuit Court of Appeals,
Ninth Judicial Circuit.*

RIALTO IRRIGATION DISTRICT,

Plaintiff in Error,

vs.

N. W. STOWELL,

Defendant in Error.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said plaintiff in error to docket said cause and file the record thereof, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 1st day of August, 1914.

Los Angeles, May 27th, 1914.

OLIN WELLBORN,

United States District Judge, Southern District of
California.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Rialto Irrigation District, Plaintiff in Error, vs. N. W. Stowell, Defendant in Error. Order Enlarging Time to File Record, etc. Filed Jun. 2, 1914. F. D. Monckton, Clerk.

[Order Extending Time to October 1, 1914, to
Docket Cause on Writ of Error.]

*In the United States Circuit Court of Appeals,
Ninth Judicial Circuit.*

RIALTO IRRIGATION DISTRICT,

Plaintiff in Error,

vs.

N. W. STOWELL,

Defendant in Error.

Good cause appearing therefor, it is hereby ordered, that the time heretofore allowed said plaintiff in error to docket said cause and file the record thereof, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, be and the same is hereby enlarged and extended to and including the 1st day of October, 1914.

Dated at Los Angeles, July 28, 1914.

OLIN WELLBORN,

United States District Judge, for the Southern District of California.

[Endorsed]: No. —. United States Circuit Court of Appeals for the Ninth Circuit. Rialto Irrigation District, Plaintiff in Error, vs. N. W. Stowell, Defendant in Error. Order Enlarging Time to Docket Cause and File Record. Filed Jul. 30, 1914. F. D. Monckton, Clerk.

No. 2491. United States Circuit Court of Appeals for the Ninth Circuit. Three Orders Under Rule 16 Enlarging Time to Oct. 1, 1914, to File Record Thereof and to Docket Case. Refiled Sep. 29, 1914. F. D. Monckton, Clerk.

*In the United States Circuit Court of Appeals for
the Ninth Circuit.*

Circuit Court No. 1419.

C. C. A. No. 2491.

N. W. STOWELL,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Defendant.

Circuit Court No. 1407.

C. C. A. No. 2492.

BURT CHELLIS,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Defendant.

Circuit Court No. 1602.

C. C. A. No. 2493.

BURT CHELLIS,

Plaintiff,

vs.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Defendant.

**Stipulation as to Printing Record and as to
Judgment on Writs of Error.**

WHEREAS, in each of the above-entitled actions,
brought in the United States District Court, South-

ern District of California, Southern Division, a judgment of that Court has been entered in favor of the plaintiff and against the defendant; and

WHEREAS, in each of said actions, the defendant has prosecuted a writ of error from said judgment entered therein, generally and as to the entire judgment, and the plaintiff has also prosecuted a writ of error from such judgment in part and as to certain particulars; and

WHEREAS, each of said actions was brought to recover upon certain bonds issued by the defendant, all of like tenor and part of the same series, and the facts and questions involved upon such writs in each of said actions are essentially the same, and the record in each case is substantially identical, so far as affects the questions involved upon the prosecution of such writs of error.

THEREFORE, IT IS HEREBY STIPULATED by and between the plaintiff and the defendant in each and all of said actions as follows:

1. That the record to be used in the prosecution of the first of said actions above mentioned (No. 1419) be printed, according to the rules and practice of the United States Circuit Court of Appeals for the Ninth Circuit, the one record so printed to be applicable both to the writ of error prosecuted by the defendant and to the writ of error prosecuted by the plaintiff in that action, and that both said writs be presented on such record and by the same briefs.

2. That pending the determination of said writs in said action No. 1419, the record in each of said other actions (Nos. 1407 and 1602) be not printed,

nor any proceeding be had as to the prosecution of said writs in either of said two actions, either on the part of the defendant or on the part of the plaintiff, but that the prosecution of said writs rest in abeyance.

3. That if, upon the determination of the said writs of error in said first mentioned action, the judgment of the lower court be reversed or modified, a like judgment of reversal or modification (in so far as the rule or ground of modification may be applicable) shall thereupon be entered in each of said other two actions, upon the said writs of error so prosecuted in each of said two actions.

4. That if upon the determination of the said writs of error in the said first-mentioned action, the judgment of the lower court be affirmed, a like judgment of affirmance (in so far as the rule or ground of affirmance may be applicable) shall thereupon be entered in each of said other two actions.

5. If upon a determination of said action No. 1419, it shall be found by the Court impracticable for any reason to render a like judgment in cases No. 1407 and 1602, or either of them, as contemplated by this stipulation or for any reason shall fail or decline to render such like judgment in cases No. 1407 and 1602, then, in that event, plaintiff in error or the defendant in error, in each of said cases, shall have the right to file the record and docket the case in each of said cases, with the clerk of said Court, within ninety days after judgment may be entered in said Court of Appeals in case No. 1419, and the said Court may, upon the filing of this stipu-

lation, make an appropriate order, extending the time for plaintiff in error and defendant in error in each of said actions No. 1407 and 1602, to file the record and docket the case in each of said two actions, as herein provided; provided, however, that if said Court, upon rendering its said judgment on said Writs of Error, in said case No. 1419, shall also render a judgment in said other cases No. 1407 and 1602, as contemplated by this stipulation, then in that event, said order extending such time as aforesaid, shall thereupon become and be inoperative and of no effect.

No. 1419.

BURT CHELLIS,

J. W. SWANWICK,

Attorneys for Plaintiff.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant.

No. 1407.

BURT CHELLIS,

J. W. SWANWICK,

Attorneys for Plaintiff.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant.

No. 1602.

BURT CHELLIS,

J. W. SWANWICK,

Attorneys for Plaintiff.

HENRY GOODCELL,

F. A. LEONARD,

Attorneys for Defendant.

[Endorsed]: Original. No. 2491. In the United States Circuit Court of Appeals, for the Ninth Circuit. Circuit Court No. 1419. N. W. Stowell, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Circuit Court No. 1407. Burt Chellis, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Circuit Court No. 1602. Burt Chellis, Plaintiff, vs. Rialto Irrigation District, a Corporation, Defendant. Stipulation Waiving Printing of Record and as to Judgment on Writ of Error. Filed Oct. 6, 1914. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the sixth day of October, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

[Order Waiving Printing of Record in Case No. 2492,
Allowing Cause to be Heard and Determined on
Records and Briefs in Case No. 2491, and
Providing for Entry of Judgment.]

No. 2492.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Plaintiff in Error,

vs.

BURT CHELLIS,

Defendant in Error,

and

BURT CHELLIS,

Plaintiff in Error,

vs.

RIALTO IRRIGATION DISTRICT, a Corpora-
tion,

Defendant in Error,

On motion of Mr. Vincent Surr, on behalf of counsel for the respective parties, and agreeably to the stipulation of counsel for the respective parties this day filed therefor, IT IS ORDERED that the original certified Transcript of Record on the writ of error and on the cross-writ of error, respectively, in the above-entitled cause need not be printed, and that the cause on said writ of error and cross-writ of error may be heard and determined on the Transcripts of Record filed, and on the briefs of counsel to be hereafter filed, in the cause entitled Rialto Irrigation District, a Corporation, Plaintiff in Error, vs. N. W. Stowell, Defendant in Error, and N. W.

Stowell, Plaintiff in Error, vs. Rialto Irrigation District, a Corporation, Defendant in Error, No. 2491, in this court, and that upon the decision of the latter cause by this Court, and the filing and entering of the judgment of this Court therein, a like Judgment, in such form as the Court may deem proper, shall thereupon be filed and entered herein as contemplated by the said stipulation of counsel.

At a stated term, to wit, the October Term, A. D. 1914, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Courtroom thereof, in the City and County of San Francisco, in the State of California, on Tuesday, the sixth day of October, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

[Order Waiving Printing of Record in Case No. 2493, Allowing Cause to be Heard and Determined on Records and Briefs in Case No. 2491, and Providing for Entry of Judgment.]

No. 2493.

RIALTO IRRIGATION DISTRICT, a Corporation,

Plaintiff in Error,

vs.

BURT CHELLIS,

Defendant in Error,

and

BURT CHELLIS,

Plaintiff in Error,

vs.

RIALTO IRRIGATION DISTRICT, a Corporation,
tion,

Defendant in Error,

On motion of Mr. Vincent Surr, on behalf of counsel for the respective parties, and agreeably to the stipulation of counsel for the respective parties this day filed therefor, IT IS ORDERED that the original certified Transcript of Record on the writ of error and on the cross-writ of error, respectively, in the above-entitled cause need not be printed, and that the cause on said writ of error and cross-writ of error may be heard and determined on the Transcripts of Record filed, and on the briefs of counsel to be hereafter filed, in the cause entitled Rialto Irrigation District, a Corporation, Plaintiff in Error, vs. N. W. Stowell, Defendant in Error, and N. W. Stowell, Plaintiff in Error, vs. Rialto Irrigation District, a Corporation, Defendant in Error, No. 2491, in this court, and that upon the decision of the latter cause by this Court, and the filing and entering of the judgment of this Court therein, a like Judgment, in such form as the Court may deem proper, shall thereupon be filed and entered herein as contemplated by the said stipulation of counsel.

